

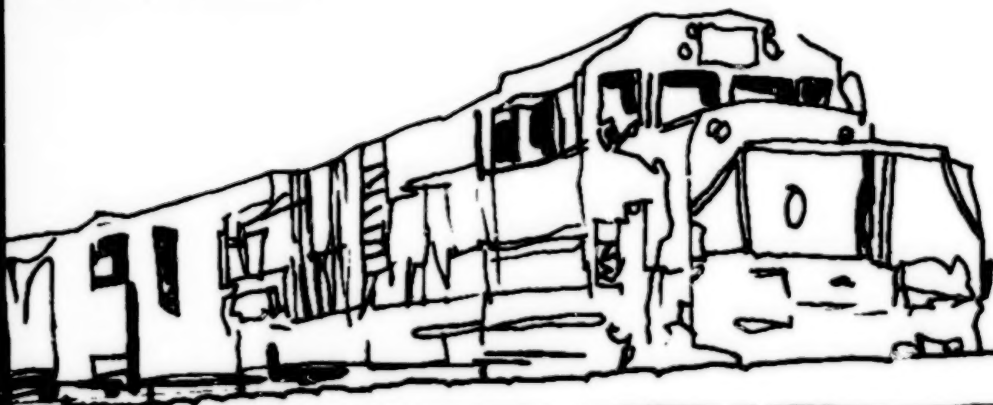
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Interstate Commerce
Commission

1993 Annual Report

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**Interstate Commerce
Commission**

1993 Annual Report



LETTER OF TRANSMITTAL

April 4, 1994

To the Congress of the United States:

It is my pleasure to submit the one hundred and seventh Annual Report of the Interstate Commerce Commission.

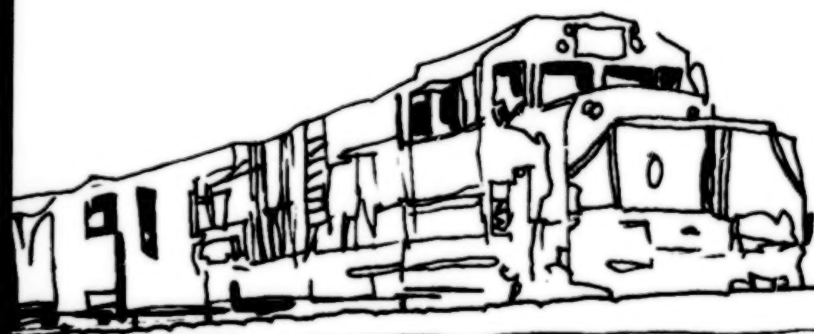
The report covers the fiscal year ended September 30, 1993, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the fiscal year appears in Appendix D.

Gail C. McDonald
Chairman

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THE COMMISSION

(As of September 30, 1993)

	Appointed	Term Expires Dec. 31
<i>Chairman</i>		
Gail Clements McDonald (D) Oklahoma	1990	1994
<i>Vice Chairman</i>		
J. J. Simmons III (D) Oklahoma	1984	1995
<i>Commissioners</i>		
Karen Borlaug Phillips (R) Virginia	1988	1996
Edward J. Philbin (R) California	1990	1993
Gregory S. Walden (R) California	1993	

Commissioners of the Interstate Commerce Commission are appointed by the President and confirmed by the Senate. The ICC is authorized to have five Commissioners, each with a five-year term of office.

On February 5, 1993, President Clinton designated Commissioner Gail C. McDonald to serve as Chairman on an acting basis, pending designation of a permanent Chairman, replacing Commissioner Edward J. Philbin who remained on the Commission. Commissioner Edward M. Emmett resigned from the Commission on November 5, 1992. On January 4, 1993, President Bush named Gregory S. Walden to a recess appointment, replacing Commissioner Emmett. Commissioner Walden's appointment expired on November 26, 1993.



Gail Clements McDonald
Chairman



J. J. Simmons III
Vice Chairman



Karen Borlaug Phillips
Commissioner



Edward J. Philbin
Commissioner



Gregory S. Walden
Commissioner

The ICC Today

Congress created the Interstate Commerce Commission in 1887 to curtail market abuse of shippers by the railroad industry. In later years the Commission's purpose expanded to ensure that the nation's shippers could transport their goods safely and efficiently at a reasonable price.

In today's market, transportation continues to play a critical role in our nation's economy, and the Interstate Commerce Commission continues to ensure competitive and efficient surface transportation services.

Although the Interstate Commerce Commission has celebrated its centennial, the agency continues to change with the times and with changes in the national transportation policy established by Congress. The ICC was at the forefront of the regulatory reform affecting the surface transportation industries in the early 1980's. In the late 1970's, for example, the Commission eased its regulation of the motor carrier industry, serving as the model for later legislative changes. In the early 1980's, three landmark pieces of legislation, the Staggers Rail Act of 1980, the Motor Carrier Act of 1980, and Bus Regulatory Reform Act of 1982, substantially, but not totally, deregulated the surface transportation industries. The Congress affirmed a continuing need for the ICC to protect the public's interest in competitive transportation rates and consistent service. In implementing these reforms, the Commission has relaxed regulation while ensuring adequate and reasonably priced transportation services.



ICC Chairman Gail McDonald welcomes participants to a conference on railroad grain car supply. ICC Vice Chairman J.J. Simmons III chaired the conference.

"The Interstate Commerce Commission has protected the public interest with great distinction since 1887. . . . The independence of the Interstate Commerce Commission ensures that shippers, passengers, and carriers have a fair forum to resolve their disputes and review regulations. . . . The ICC has reinvented itself into a trim, efficient, and effective agency."

Senator J. James Exon

"Due to the ICC's efforts, many rural shippers . . . continue to enjoy rail service on lines that previously would have been abandoned."

George Betke,
Chairman and CEO
FARMRAIL, Inc.

"The public interest requires that transportation services, which are critical to the growth and stabilization of our Nation's economy, be subject to government oversight."

Congressman Nick Rahall

The Interstate Commerce Commission takes seriously its fiscal responsibility to the American taxpayer. The ICC has cut its staff by 68% since 1980. The commitment and expertise of the Commission's staff have enabled the agency to increase productivity while absorbing these personnel cuts. The agency's independent status allows for quick and efficient action, particularly in responding to situations facing individual consumers and local communities across the nation. Examples are:

- Last summer's severe flooding in the mid-west United States threatened the health of several railroads. Small railroads, in particular, were faced with financial ruin. The Commission quickly responded by conducting a survey of all rail damage and forwarding the results to the Congress and the U.S. Department of Transportation. As a result, those railroads received financial assistance and are continuing to provide critical transportation services today.
- When individual shippers of household goods encounter problems in the course of their interstate moves, they can obtain prompt assistance from the ICC. When several families' goods were held against their wishes in storage because the moving company did not have a license to operate, the Commission used its litigation authority to obtain a court order requiring the company to arrange for immediate delivery of the household effects.



The agency works to resolve disputes that arise between regulated rail, truck, and bus carriers and the public or between various segments of the surface transportation industry. Pictured above is a meeting of the Commission's Office of Compliance and Consumer Assistance.

"The ICC provides critical oversight in rail abandonments. If it were not for the ICC, South Dakota may be without rail transportation service today. . . . The ICC's responsibilities encompass a necessary and independent review of checks and balances for the rail, truck, and bus industries. . . . The ICC provides a fair means for resolving interstate transportation disputes, such as disagreements between shippers and railroads, or small business owners and trucking companies."

Senator Larry Pressler

"I was so impressed with your attitude of service that I can't express my gratitude. We are small business owners who believe that it is the responsibility of government agencies and employees to respond to the people appropriately. This is the first time in my experience with government that this has happened."

Linda M. Jones, President
LMJ Dump Trucking, Inc.

"The ICC has reinvented itself to do more with less."

Congressman Bob Carr

The Commission has been instrumental in ushering the railroad, truck, and bus industries into the Twenty-First Century. The regulatory reforms of the 1980's in conjunction with the Commission's oversight have established and maintained a balanced and competitive marketplace. The private-public dynamic allows companies to operate with limited regulatory restraints, and ensures the protection of the public interest by preserving our nation's vital transportation networks, at fair and reasonable prices.



An employee assists visitors in the agency's public tariff room.



Using the ICC's docket and research center where the public can obtain information on rail, truck, and bus filings.

"The efficiency, speed and courtesy that you demonstrated makes me almost happy to pay taxes."

Mr. Harvey Voron
Philadelphia, Pennsylvania

"Without the involvement and splendid cooperation of the ICC, matters would still be at a standstill. But thanks to the ICC, whatever furniture and household goods that were not lost were finally delivered at no cost to us."

Mr. Edmund A. Bowles
Falls Church, Virginia

"The ICC's mission is an important one that should be preserved. . . . The ICC provides an independent forum to review the complaints and concerns of shippers, carriers, and passengers. It is the ICC's job to maintain a level playing field for its constituencies. . . . Without the independent review afforded by the ICC, what guarantee will people have that their concerns will be taken seriously."

Senator Thomas A. Daschle

How the ICC Operates

The Commission decides individual cases and determines policy through its rulemaking and adjudicative proceedings to ensure the effective administration of the Interstate Commerce Act, related statutes, and regulations. The ICC maintains jurisdiction over approximately 60,000 for-hire companies providing surface transportation in the U.S. Among these companies are railroads, trucking companies, bus lines, barge operations, a coal slurry pipeline, certain types of chemical pipelines, household goods movers, and freight forwarders of household goods.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies. In addition, the Chairman generally is responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and,
4. Development and utilization of effective, expert staff support for the fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission and assumes the Chairman's duties during the Chairman's absence. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, and discipline of non-attorney Interstate Commerce Commission practitioners.

During Fiscal Year 1993, the Commission's activities were carried out by the following Commission offices:

The Office of Compliance and Consumer Assistance monitors the activities of ICC-regulated companies and rate bureaus to ensure compliance with the Interstate Commerce Act, and assists the public in the resolution of complaints against ICC-regulated companies.

The Office of Congressional and Public Affairs develops and maintains cooperative relations with Congress; performs liaison activities with Congress to enhance understanding of Commission actions; responds to Congressional inquiries; and prepares testimony for presentation at Congressional hearings and written comments on proposed legislation for submission to Congress. Directs the inter-governmental, public, industry and media affairs for the Commission.

The Office of Economics conducts economic and statistical analysis of the transportation industry and provides economic advice to the Commission. The office develops and applies uniform accounting and reporting rules; reviews various financial reports; analyzes cost, economic, engineering, and financial evidence submitted by parties in cases before the Commission; compiles and publishes transportation statistics and cost studies; conducts audits of pertinent records of transportation firms; and ensures that energy and environmental concerns are adequately assessed in Commission proceedings.

The Office of the General Counsel renders legal opinions to the Commission, and defends Commission decisions challenged in court.

The Office of Hearings is staffed by Administrative Law Judges that conduct various hearings and render initial decisions as directed by the Commission.

The Office of Human Relations manages the Commission's program to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.

The Office of Inspector General conducts independent internal audits and investigations of the Commission's operations.

The Office of the Managing Director manages the Commission's day-to-day operations. This includes budget, personnel, administrative services, and systems development.

The Office of Proceedings provides legal research and writing underlying decision-making in cases pertaining to operating rights, financial matters, mergers, rates, abandonments, and competitive practices.

The Office of Public Assistance functions as a clearinghouse for resolution of small-business problems related to surface transportation regulation; contributes to the public interest record in Commission cases; and assists individuals, consumer groups, small communities, small shippers, as well as transportation and public utility commission officials participating in those cases.

The Office of the Secretary serves as the Commission's documentation center and clerk of the Commission. The Secretary's legal unit prepares procedural decisions and informal opinions. The office is responsible for recordkeeping and the issuance of the Commission's decisions and other legal documents. The office also administers the examination program for non-attorney ICC practitioners and is involved in the acceptance of filings and the assignment of proceedings to the Commission's offices.

The Office of Tariffs monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they become effective.



RAILROADS

Highlights of the Year

- Revenues, earnings, and traffic volume for class I railroads increased for first nine months of the fiscal year.
- Net railway operating income increased almost 10% and ordinary income rose nearly 27% for the first nine months of the fiscal year.
- Commission accepted for consideration the common control application of Union Pacific Railroad Company, Missouri Pacific Railroad Company and Chicago & North Western Transportation Company.
- The short line and regional railroad industry continued to grow, accounting for nearly 25% of the nation's 174,000-mile railroad system. Most new short line and regional railroads have been created from marginal lines purchased from class I railroads that would otherwise have been abandoned.
- Commission revoked the class exemption granted Fox Valley & Western Ltd. to acquire the Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation and the Ahnapee & Western Railway Company. Instead, the Commission exempted the transaction, subject to labor protective conditions.
- Commission approved the common control application of Kansas City Southern Industries, Inc., and its subsidiaries, Kansas City Southern Railroad and K&M Newco, Inc., of MidSouth Corporation, a holding company controlling four regional railroads.
- Commission surveyed railroads affected by 1993 summer flooding in the Midwest regarding lost revenues and funds needed for rehabilitation and forwarded findings to Senate and House Committees and to the Department of Transportation.
- Commission received seven petitions to construct a total of 101 miles of track and granted four petitions to construct a total of 82 miles of track. Commission denied one request on environmental grounds.
- Commission ruled that it lacks jurisdiction over Canadian National Railway Company's relocation of an existing international railroad tunnel under the St. Clair River between Sarnia, Ontario and Port Huron, Michigan.

RAILROADS

Financial Condition

Revenues, earnings and traffic volume for the nation's class I railroads¹ rose during the first nine months of Fiscal Year 1993 compared to the previous year, as illustrated in the table below.² This was due to an improved economy and increased productivity. Earnings were particularly affected by a reduction in the size of train crews as a result of labor agreements. Operating revenues and revenue ton miles increased by almost 1.9% and 3.1%, respectively. Net railway operating income increased almost 10% and ordinary income rose nearly 27%.

	(\$ in Thousands) (Ton Miles in Millions)	
	First 9 Months FY 1993	First 9 Months FY 1992
Railway Operating		
Revenues	\$21,516,703	\$21,111,551
Net Railway		
Operating Income	2,041,409	1,864,321
Ordinary Income	2,325,730	1,836,940
Revenue Ton Miles ..	813,453	789,124

These earnings data exclude large accounting adjustments (special charges) by seven railroads to record employee restructuring (primarily severance pay and buyouts), write-downs of light density lines to be abandoned or sold, and set-asides for litigation and environmental reserves.

During Fiscal Year 1993, class I rail employment declined 3.1% compared to Fiscal Year 1992. Rail industry em-

ployment has decreased about 58% since passage of the Staggers Rail Act of 1980.³

Financial Transactions

Inter-carrier Transactions. The Commission accepted for consideration the proposed common control of three of the nation's major railroads—Union Pacific Railroad Company, which operates over approximately 6,000 miles of main line and approximately 3,000 miles of branch line in the West, Missouri Pacific Railroad Company, which operates over approximately 8,000 miles of main line and 2,000 miles of branch line in the Midwest and Southwest, and Chicago & North Western Transportation Company, which operates over approximately 2,500 miles of main line and 3,100 miles of branch line in the Upper Midwest.⁴ Several railroads and the Railway Labor Executives Association moved to dismiss the application. After oral argument, the Commission denied the motions.⁵

The Commission revoked the class exemption it had granted Fox Valley & Western Ltd. (FV&W) to acquire the Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation and the Ahnapee & Western Railway

³ Revenues, earnings and traffic volume data are obtained from the *Quarterly Report of Revenues, Expenses and Income—Railroads* and *Quarterly Condensed Balance Sheet—Railroads*. Employment figures are from *Form C: Monthly Report of Employees of Class I Railroads*.

⁴ Finance Docket No. 32133, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company* (not printed), served February 26, 1993.

⁵ Finance Docket No. 32133, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company* (notice of decision not printed), served September 26, 1993.

¹ Class I railroads have adjusted annual operating revenues of \$250 million or more for three consecutive years (See *Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition for Rulemaking with Respect to 49 CFR 1201, B I.C.C.2d 625 (1992)*). Revenues are adjusted annually to eliminate the effects of inflation from the classification process.

² Figures for the last three months of the fiscal year were not available when the report went to press.

Company. In revoking the class exemption, the Commission approved the transaction subject to employee protective conditions.⁶ The Commission also approved the application of Wisconsin Central Transportation Corporation and its carrier subsidiaries to continue in control of FV&W upon FV&W's becoming a carrier, subject to conditions providing for continued oversight of the transaction's competitive consequences.⁷

Noting the support of shippers and communities and the absence of opposition, the Commission approved the application of Kansas City Southern Industries, Inc., and its subsidiaries, Kansas City Southern Railroad and K&M Newco, Inc., to obtain common control of MidSouth Corporation, a holding company controlling four regional railroads.⁸ The Commission found no adverse competitive effects resulting from the transaction.

*The Feeder Line Development Program.*⁹ The program is designed to prevent downgrading or abandonment of lines. The Interstate Commerce Act provides that anyone may be allowed to buy and any owning railroad may be required to sell any rail line (1) that has been placed in category I on the railroad's "System Diagram Map"¹⁰ or (2) where the Commission has approved

the sale of the line. The purchaser must pay the constitutional minimum price for the line and guarantee adequate service for at least three years.¹¹ If the railroad and the purchaser cannot agree on the purchase price, the Commission will set it. During the fiscal year, the Commission issued decisions in two feeder line cases.¹² A decision in a third case was pending at the end of the fiscal year.

Trackage Rights. The Commission has exempted all grants of trackage rights from Commission review.¹³ The purpose of the exemption is to stimulate competition by allowing railroads greater flexibility in giving other railroads the right to operate over their lines. Railroads may invoke the class exemption by filing notices with the Commission.¹⁴ During the fiscal year, 46 such notices were filed. The Commission may also require railroads to grant trackage rights to other railroads as a condition to the approval of a merger or other consolidation. In such cases the Commission may be required to fix the compensation for the rights.¹⁵

⁶ *Fox Valley & Western Ltd.—Exempt. Acq. and Oper.*, 9 I.C.C.2d 209 (1992).

⁷ *Wisc. Central Transportation Corporation, Et Al.*, 9 I.C.C.2d 233 (1992).

⁸ Finance Docket No. 32167, *Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company and K&M Newco, Inc.—Control—MidSouth Corporation, MidSouth Railway Corporation, MidLouisiana Rail Corporation, Southrail Corporation and Tennrail Corporation* (not printed), served June 4, 1993.

⁹ 49 U.S.C. 10910.

¹⁰ Each railroad is required to file and update annually a System Diagram Map. Inclusion of a line of railroad in category I means that the carrier intends to file an application to abandon the line within the next three years (49 CFR 1152.10).

¹¹ 49 U.S.C. 10910(a) (1).

¹² Finance Docket No. 32331, *Valley Feed Company—Feeder Line Application—Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company Line in Augusta County, Virginia* (not printed), served September 3, 1993 and September 14, 1993; Finance Docket No. 32293, *Union Pacific Railroad Company—Petition for Declaratory Order—Feeder Line Acquisition by Wyoming & Colorado Railroad Inc.* (not printed), served June 15, 1993.

¹³ 49 CFR 1180.2(d)(7). The exemption applies to acquisitions and renewals of trackage rights that are based on written agreements and not filed or sought in responsive applications in rail consolidation proceedings.

¹⁴ 49 CFR 1180.4(g) sets out the applicable procedures.

¹⁵ See, *Atchison, T. & S.F. Ry. Co. Operating Agreement*, 8 I.C.C.2d 297 (1992) and Finance Docket No. 22218, *et al., The Atchison, Topeka and Santa Fe Railway Company—Operating Agreement—Southern Pacific Transportation Company* (not printed), served July 8, 1993.

Bankruptcy. Under the Bankruptcy Code,¹⁶ the Commission has jurisdiction over a limited class of applications involving the transfer and operation of lines of bankrupt railroads under plans of reorganization. The Commission revised its regulations for these applications to conform to the Commission's regular procedures, subject to modification when necessary to comply with court-imposed time constraints.¹⁷

Labor Issues

The Commission reaffirmed that, absent special circumstances, imposition of employee protective conditions is not required in rail line acquisitions by a noncarrier.¹⁸ Labor protection is mandatory, however, under section 11343 for all acquisitions by rail carriers. When Fox Valley & Western Ltd. (FV&W), a noncarrier, acquired substantially all of the assets of the Fox River Valley Railroad Corporation (FRVR), the Green Bay and Western Railroad Company (GBW) and the Ahnapee and Western Railway Company, the Commission concluded that the transaction amounted to the acquisition of control of the three carriers. Because the transaction involved the acquisition of carriers rather than just assets, the purchase was subject to section 11343 rather than section 10901. The agency therefore imposed mandatory labor protective conditions.¹⁹

When questions arose concerning compliance by FV&W with the employee protective conditions, the Commission postponed the effective date of its au-

thorization of the transaction and began an investigation.²⁰ Subsequently the Commission required that an implementing agreement be established among FV&W, the selling railroads, and the employees of these railroads. The agency held that its *New York Dock* precedent²¹ demanded as a precondition to consummation of the transaction the creation of implementing agreements by negotiations, or failing that, by arbitration.²² The parties proceeded to arbitration. Several arbitration awards were entered, which the Commission recognized as constituting *New York Dock* implementing agreements.²³ At the end of the fiscal year petitions seeking review of the arbitration awards were pending before the Commission.

In another important case, the Commission reviewed two arbitral decisions concerning the *Nickel Plate* employee protective conditions imposed on the 1962 merger of the Norfolk and Western Railway Company (N&W) and the New York, Chicago and St. Louis Railroad Company (Nickel Plate).²⁴ The *Nickel Plate* conditions provided "attrition protection" (working-lifetime wage guarantees) for employees of the two railroads, and gave the surviving railroad, N&W, the right to transfer the work of the protected employees throughout the merged system.

In 1989 and 1990, N&W abolished certain positions then held by former

²⁰ *Fox Valley & Western Ltd.-Exempt., Acq. and Oper.*, 9 I.C.C.2d 260 (1992).

²¹ *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84 (1979).

²² *Fox Valley & Western Ltd.-Exempt., Acq. and Oper.*, 9 I.C.C.2d 272 (1993).

²³ Finance Docket No. 32035, *Fox Valley & Western Ltd.—Exemption Acquisition and Operation—Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ahnapee & Western Railway Company—Petition for Emergency Cease and Desist Order* (not printed), served August 26, 1993.

²⁴ *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1 (1964)(*Nickel Plate*).

¹⁶ 11 U.S.C. §1172(b).

¹⁷ *Transfer or Operation of Lines of R.R. in Reorganization*, 9 I.C.C.2d 201 (1992).

¹⁸ See, e.g., Finance Docket No. 32257, *Winamac Southern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation* (not printed), served August 27, 1993.

¹⁹ *Fox Valley & Western Ltd.—Exempt., Acq. and Oper.*, 9 I.C.C.2d 209 (1992).

Nickel Plate employees. These employees, declining to exercise their seniority rights, submitted displacement claims. N&W denied the claims, reasoning that a protected employee, upon abolition of his job, has no right to a displacement allowance after refusing to exercise seniority to obtain an available position.

The arbitrator ruled that each employee must accept available assignments in any seniority district unless accepting the assignment would place the employee in a worse position. This year the Commission found that the two arbitral awards, dealing with job abolition, fundamentally misinterpreted the *Nickel Plate* conditions governing work transfers. The Commission vacated the awards and remanded the proceedings to the arbitral board.²⁵

In one case, the Commission denied review of an arbitration award because the appeal was filed late and the employees failed to demonstrate that discretionary review was warranted.²⁶

With respect to labor protective conditions mandated in connection with an approved control and/or merger transaction, the Commission reaffirmed that the conditions generally extend only to railroad employees that are parties to the transaction. The Commission noted an exception to this rule, however, relating to "joint" or "common" employees of a non-party.²⁷

The Commission reconsidered whether the San Diego Trolley, Inc., a rail passenger carrier subsidiary of the San Diego Metropolitan Transit Development Board, is subject to the Railway Labor Act (RLA). The Commission reaffirmed that, because the "electric railway" proviso exempts a "street, interurban, or suburban electric railway" from Federal regulation, San Diego Trolley is not a "carrier" subject to the RLA.²⁸

Short Line and Regional Railroads

The short line and regional railroad industry continues to grow. Today, class II and class III railroads account for approximately 11% of total railroad employment and nearly 25% of the nation's 174,000-mile rail system.²⁹ Most new short line and regional railroads have been created from marginal lines purchased from class I railroads that otherwise would have been abandoned.

As this segment of the rail industry has matured, the pattern of growth has shifted from the formation of new carriers to the expansion and consolidation of existing short line and regional systems. Most of the line acquisition exemptions approved involved a related control proceeding, indicating that the purchaser of the line is part of an existing carrier system. Another major change in the short line industry is the issuance of stock. A small but growing number of short line railroads or their holding companies have offered shares for public trading. The proceeds from these stock offerings are frequently used to retire long-term debt.

The Commission's class exemption procedures³⁰ continue to be the method of choice for the creation and expansion of short lines and regional

²⁵ Finance Docket No. 21510 (Sub-No. 4), *Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company—Merger, Etc.* (Arbitration Review) (not printed), served July 27, 1993.

²⁶ Finance Docket No. 28583 (Sub-No. 25), *Burlington Northern, Inc.—Control and Merger—St. Louis-San Francisco Railway Company* (not printed), served March 8, 1993.

²⁷ Finance Docket No. 32167, *Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company and K&M Newco, Inc.—Control—MidSouth Corporation, MidSouth Rail Corporation, MidLouisiana Rail Corporation, SouthRail Corporation, and TennRail Corporation* (not printed), served June 4, 1993.

²⁸ *International Brotherhood of Electrical Workers*, 9 I.C.C.2d 672 (1993).

²⁹ *Profiles of U.S. Railroads*, Association of American Railroads (Washington, 1992, Supplement).

³⁰ 49 CFR 1150.32 *et seq.*

systems. The procedures are expeditious and labor protective conditions are not normally required.

As reported in the *Financial Transactions* and *Labor Issues* sections of this report, the Commission decided two important cases involving regional railroads.³¹ These proceedings illustrate the benefits to the public of a strong short line and regional carrier industry. By its purchase, Wisconsin Central, which in a short period of time built a strong regional system from lines sold by the Soo Line Railroad, will preserve the operations of two regionals, which, in turn, were formed from unwanted lines of the Chicago and North Western Transportation Company. Similarly, MidSouth Corporation transformed failing Illinois Central lines into a system sufficiently successful to prompt an attempted hostile takeover by the latter, and ultimately, purchase by another class I railroad, the Kansas City Southern Railroad. Without an aggressive and innovative regional carrier industry, these lines might have been abandoned and hence lost to the nation's rail system.

During the summer of 1993, flooding disrupted surface transportation in the Midwest. The Commission's Office of Compliance and Consumer Assistance (OCCA) contacted carriers known or likely to be affected to assess the impact of the flooding in terms of lost revenues and monies needed for rehabilitation.³²

OCCA's findings were forwarded to Congress on July 19, 1993.³³ Chairman McDonald testified on the Commission's findings at public hearings on the flooding conducted by the House Energy and Commerce Committee's Subcommittee on Transportation and Hazardous Materials on September 23, 1993.

Abandonments

During Fiscal Year 1993, the Commission authorized the abandonment of over 1,897 miles of track.³⁴ In Fiscal Year 1992, the Commission authorized abandonment of over 1,824 miles. Requests for abandonment authorization are made under three separate procedures:³⁵ formal applications under the public convenience and necessity standard,³⁶ petitions for exemption,³⁷ and notices of exemption under the Commission's class exemption for lines that have been out-of-service for two or more years.³⁸ Formal applications for abandonment are used for abandonments that must be examined in detail and for adverse abandonments filed by parties other than the railroad. During the fiscal year, the Commission granted 18 such formal applications encompassing 362 miles of track and denied one application involving 32 miles of track. Public participation in all abandonment proceedings is encouraged. In the interests of due process, however, the Commission addresses only

³¹ See discussion of Fox Valley & Western Ltd., a subsidiary of the Wisconsin Central Railroad, purchase of the Fox River Valley Railroad and Green Bay Western Railroad, and Kansas City Southern Railway control of MidSouth Rail Corporation, in the *Financial Transaction* and *Labor Issues* sections of this report.

³² The Commission monitored 37 railroads, including seven class I carriers, four regional carriers, 17 short-line carriers and nine switching carriers. Carriers estimated damages to their systems ranging from \$100,000 to \$5 million. Eight railroads reported operating disruptions ranging from 2 to 29 days' duration.

³³ *ICC Media Advisory*, No. 93-184, July 20, 1993.

³⁴ See Appendix B, Table 8, for a breakdown of abandonment requests and the miles involved.

³⁵ Additionally, Consolidated Rail Corporation may abandon lines under special provisions of the Northeast Rail Service Act of 1981, Public Law No. 97-35. This year Conrail abandoned three lines pursuant to this authority. Only 26 previously designated lines may still be abandoned under these provisions.

³⁶ 49 U.S.C. 10903.

³⁷ 49 U.S.C. 10505.

³⁸ The class exemption rules appear at 49 CFR 1152.50.

those concerns expressed in comments served on all parties of record.³⁹

Petitions for exemption from formal review of abandonment requests are decided under the standards of 49 U.S.C. 10505. These standards require the Commission to grant an exemption when it determines that regulation is not necessary to carry out the transportation policy of the United States and the service is of limited scope or is not needed to protect shippers from abuse of market power. During the fiscal year, the Commission granted 45 petitions involving 884 miles of track and denied one petition involving one mile of track.

Notices of exemption may be used by railroads that certify that no local traffic has moved over a line for two or more years and that any overhead traffic can be rerouted.⁴⁰ Notices of exemption automatically become effective 30 days after publication in the *Federal Register*. If a notice does not adequately demonstrate that a railroad qualifies to use the class exemption, the Commission may reject the notice or, alternatively, require the railroad to submit supplemental information.⁴¹ The class exemption may not be used when another railroad holds trackage rights over the line, unless the trackage rights operator also certifies that it has not moved traffic over the line for two years and also files for discontinuation authorization.⁴² During the fiscal year, the

Commission allowed to take effect 75 notices of exemption involving 650 miles of track and dismissed seven notices involving 141 miles of track.

Offers of financial assistance either to purchase a line or subsidize continued operations can be made to prevent consummation of an authorized abandonment.⁴³ By filing an offer of financial assistance, shippers, local communities, and others who face the loss of rail service when the Commission permits a line to be abandoned may seek to force the abandoning railroad to sell the line to them or may require the railroad to continue to operate by subsidizing its losses. If the abandoning railroad and a potential buyer or subsidizer are unable to agree to the terms and conditions of a sale, the Commission will set them. During the fiscal year, the Commission received 14 offers of financial assistance to acquire 256 miles of track and received six requests to set terms and conditions involving 166 miles of track.

The burden of proof in a proceeding to set terms and conditions is generally on the offeror. The Commission held, however, that the railroad has an affirmative obligation to disclose any mineral assets or easement and non-operating property values that would increase the purchase price or that should be excluded from the sale.⁴⁴

In purchases, only that part of the rail line required for transportation services is ordered to be transferred.⁴⁵ For example, an offeror would not be required to purchase a spur line that con-

³⁹ 49 CFR 1104.12(c) and See Docket No. AB-397 (Sub-No. 2X), *Wyoming and Colorado Railroad Company, Inc.—Abandonment—In Jackson County, Colorado* (not printed), served September 15, 1993.

⁴⁰ 49 CFR 1152.50.

⁴¹ Docket No. AB-33 (Sub-No. 77X), *Union Pacific Railroad Company—Abandonment Exemption—In Solano County, CA* (not printed), served December 15, 1992.

⁴² Docket No. AB-33 (Sub-No. 77X), *Union Pacific Railroad Company—Abandonment Exemption—In Solano County, CA* (not printed), served February 16, 1993.

⁴³ 49 U.S.C. 10905.

⁴⁴ *Buffalo Ridge RR, Inc.—Aban. Bet. Manley, MN and Brandon, SD*, 9 I.C.C.2d 544 (1993) clarified at 9 I.C.C.2d 778 (1993).

⁴⁵ Docket No. AB-290 (Sub-No. 120), *Chesapeake Western Railway Company—Abandonment—Between Pleasant Valley and Staunton in Rockingham and Augusta Counties, VA* (not printed), served January 15, 1993.

nects with the line to be acquired if the spur line is not required for the proposed service. The Commission will grant exemptions from these procedures when lines are already designated for public uses such as highway expansions⁴⁶ or mass transit corridors.⁴⁷

The Commission rejected one offer of financial assistance, an offer to purchase Conrail's West 30th Street line in New York City, following approval of an adverse abandonment application.⁴⁸ The Commission found that the offeror had failed to show its financial ability to rehabilitate and operate the line for the obligatory two-year service period imposed by statute.⁴⁹ In another case, the Commission rejected an offer of financial assistance filed by a railroad because other railroads were already providing service on all portions of the line.⁵⁰ If the Commission sets terms for a subsidy of a line, the railroad must accept the subsidy and continue operations. This year, the Commission prescribed a method for calculating a subsidy.⁵¹

Notices or Certificates of Interim Trail Use. The Commission issued numerous notices and certificates of interim trail use (NITU or CITU). They were

issued under the National Trails System Act,⁵² to preserve rail rights-of-way for future restoration of rail service and to provide for interim trail use.⁵³ Interim trails are used for various activities, ranging from bicycle trails⁵⁴ to tourist train operations.⁵⁵ The Commission ordinarily extends the 180-day negotiating period,⁵⁶ thus postponing authorization of the proposed abandonment, when parties have not reached an interim trail use agreement but continue to negotiate.⁵⁷

In some circumstances, however, trail use can be approved even if an abandonment has already been authorized. The Commission generally accepts late-filed trail use requests as long as the Commission continues to have jurisdiction over the line. Because Commission jurisdiction over a right-of-way continues until consummation of an abandonment, the question of when consummation occurred continues to be litigated. A major consideration is the intent of the railroad to consummate. The Commission held that a railroad's willingness to enter into a trail use agreement is normally sufficient to find that abandonment authority has not been consummated.⁵⁸ The Commission also allowed a partial abandonment after a trail user determined that not all of a rail-banked right-of-way was

⁴⁶ Docket No. AB-343 (Sub-No. 2X), *et al.*, Wisconsin Department of Transportation—Abandonment Exemption—In Winnebago County, WI (not printed), served July 13, 1993.

⁴⁷ Docket No. AB-3 (Sub-No. 105X), Missouri Pacific Railroad Company—Abandonment Exemption—In Harris County, TX (not printed), served December 22, 1992.

⁴⁸ Docket No. AB-167 (Sub-No. 1094), Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY (not printed), served December 9, 1992, *aff'd* in a decision (not printed), served July 22, 1993.

⁴⁹ 9 U.S.C. 10905(f)(4).

⁵⁰ Docket No. AB-374 (Sub-No. 1X), Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption—In Calhoun County, AL (not printed), served October 23, 1992. The Commission rejected the offer despite the offering carrier's pre-existing contractual right to purchase the line.

⁵¹ Missouri Pac. R. Co.—Aban. Doug., Champ. & Verm. Count., IL, 9 I.C.C.2d 875 (1993).

⁵² 16 U.S.C. 1247(d).

⁵³ See Table for a complete accounting of CITU and NITU requests, grants and denials.

⁵⁴ Docket No. AB-12 (Sub-No. 144X), Southern Pacific Transportation Company—Abandonment Exemption—In Lafayette and St Landry Parishes, LA (not printed), served March 12, 1993.

⁵⁵ Docket No. AB-33 (Sub-No. 77X), Union Pacific Railroad Company—Abandonment Exemption—In Solano County, CA (not printed), served May 10, 1993.

⁵⁶ 49 CFR 1152.29(d) and (g).

⁵⁷ Docket No. AB-167 (Sub-No. 1095X), Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, PA (not printed), served March 5, 1993.

⁵⁸ SSW Ry. Co.—Aban.—In Smith and Cherokee Counties, TX, 9 I.C.C.2d 429 (1992).

suitable for trail use.⁵⁹ The Commission clarified that the lack of a current or prospective need for rail service does not defeat interim trail use.⁶⁰

Constructions

During Fiscal Year 1993, the Commission received seven exemption petitions to construct a total of 101 miles of railroad and granted four petitions to construct a total of 82 miles of rail line. The Commission dismissed two petitions to build a total of 33 miles of line. The construction of rail lines is permitted only if the Commission finds (1) the applicant is financially fit to undertake the construction and provide service, (2) there is a public demand or need for the proposed service, and (3) the construction project will be in the public interest and not unduly harm existing services.

The Commission denied an application for authority to construct one rail line.⁶¹ The Indiana & Ohio Railway Company (I&OR) proposed building a 2.9-mile line over a former Penn-Central Transportation Company right-of-way in Ohio. After the line was abandoned in 1976 the underlying real estate had been sold to adjacent landowners and residences built on or immediately adjacent to the old right-of-way. Because of the proximity of the proposed line to these residences, the Commission found that the construction of the line and its operation presented a serious threat to public safety that could not be adequately mitigated. These public safety concerns outweighed the transportation benefits of the proposed line. This case was the first time in which the Commission de-

nied a construction application on environmental impact grounds.

The Commission tentatively approved a number of railroad construction proposals. Final approval will depend upon the results of ongoing environmental review. Examples include: (1) Southern Gulf Railway Company's proposal to build a 4-mile line of railroad near Westlake, Louisiana, to service the Nelson Generating Station's Unit 6 coal-fired electric generating station;⁶² (2) Burlington Northern Railroad Company's proposed construction of a 17-mile line of railroad between Bevier and Moberly, Montana, to allow more direct unit train movements of low-sulfur coal from Powder River Basin to the Thomas Hill Energy Center of Associated Electric Cooperative, Inc.;⁶³ and (3) Gateway Western Railway Company's (GWRC) request for construction authority to build about 3,550 feet of connecting track near East St. Louis, Illinois to create more efficient and less costly operations and to allow GWRC to avoid traversing a high crime area where its trains are subject to theft and vandalism;⁶⁴ and (4) Ozark Mountain Railroad's proposal to construct four rail lines in Arkansas and Missouri to provide tourist passenger train service serving Eureka Springs, Harrison, and Branson, a country music center. The proposal also includes construction of new lodging, restaurants, and theme parks.⁶⁵

⁵⁹ Finance Docket No. 32321, *Southern Gulf Railway Company—Construction Exemption—In Calcasieu Parish, LA* (not printed), served September 9, 1993.

⁶⁰ Finance Docket No. 32229, *Burlington Northern Railroad Company—Construction and Operation Exemption—Macon and Randolph Counties, MO* (not printed), served September 17, 1993.

⁶¹ Finance Docket No. 32158 et al., *Gateway Western Railway Company—Construction Exemption—St. Clair County, IL* (not printed), served May 11, 1993.

⁶² Finance Docket No. 32204, *Ozark Mountain Railroad—Construction Exemption* (not printed), served February 10, 1993.

⁵⁹ Docket No. AB-6 (Sub-No.334X), *Burlington Northern Railroad Company—Exemption—Abandonment Between Estellene and Plainview, TX* (not printed), served June 8, 1993.

⁶⁰ *Wisc. and Calumet R.R. Co., Inc.—Inter. Trail Use*, 8 I.C.C.d 811 (1992).

⁶¹ *Construction and Operation—Indiana & Ohio Ry. Co.*, 9 I.C.C.2d 783 (1993).

The Commission approved a series of transactions⁶⁶ to facilitate Canadian National Railway Company's (CN) relocation of an existing international railroad tunnel under the St. Clair River between Sarnia, Ontario and Port Huron, Michigan. Because CN viewed the project as lying outside the Commission's jurisdiction, it did not seek specific construction authority for the project. The City of Detroit and Canadian Pacific Railroad filed formal complaints arguing that the CN could not build the tunnel without obtaining authority from the Commission. The North Atlantic Ports Association, representing United States ports, also objected to the project. CN filed a motion to dismiss the complaints arguing that the Commission lacked jurisdiction. On September 14, 1993, the Commission heard oral argument and subsequently voted to grant CN's motion to dismiss the complaints for lack of jurisdiction.⁶⁷

⁶⁶ Finance Docket No. 32115, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company*; Finance Docket No. 32116, *St. Clair Tunnel Company—Acquisition Exemption—Grand Trunk Western Railroad Company*; Finance Docket No. 32117, *Canadian National Railroad Company—Continuance in Control—St. Clair Tunnel Company* (decisions not printed), served August 4, 1992; Finance Docket No. 32196, *St. Clair Tunnel Company—Acquisition Exemption—Canadian National Railway Company* and Finance Docket No. 32197, *Canadian National Railway Company—Trackage Rights Exemption—St. Clair Tunnel Company* (decisions not printed), served December 10, 1992; and Finance Docket No. 32209, *Grand Trunk Western Railroad, Inc.—Acquisition Exemption—Grand Trunk Western Railroad Company* and Finance Docket No. 32210, *Grand Trunk Corporation—Continuance in Control—Grand Trunk Western Railroad, Inc.* (decisions not printed), served January 13, 1993.

⁶⁷ Finance Docket No. 32243, *City of Detroit v. Canadian National Railway Company, St. Clair Tunnel Company, Grand Trunk Corporation, Grand Trunk Western Railroad, Inc., and Grand Trunk Western Railroad Company* (notice of decision not printed), served September 30, 1993. The notice was served to allow construction of the project, which had already begun, to continue. A written decision addressing the merits of the controversy was being prepared at the close of the fiscal year.

Rates

The Commission's regulation of rail rates is based on a standard designed to allow railroads to achieve revenue adequacy and to protect shippers from unreasonable transportation charges. Congress, in the Staggers Rail Act of 1980, limited Commission authority to determine the reasonableness of railroad rates to situations where the railroads have "market dominance." A person complaining about a railroad rate must show that a feasible competitive alternative is lacking before the Commission may assert jurisdiction to hear the complaint.

In addition, railroad rate increases may not be challenged as long as they do not exceed a specific percentage, published quarterly by the Commission, called the Rail Cost Adjustment Factor (RCAF). The RCAF is based on an index of costs prepared by the Association of American Railroads (AAR), which is verified and modified when necessary by the Commission.⁶⁸ The RCAF is used by parties to contracts to adjust the rates set by agreement.

Before the Commission may determine whether a railroad has market dominance over a particular service it must determine first whether the ratio of the rate charged for that service to the variable cost of providing the ser-

⁶⁸ The first, second, third, and fourth quarter RCAFs, adjusted for productivity, were: .863, .848, .846, and .847, respectively. Ex Parte No. 290 (Sub-No. 5)(93-1), *Quarterly Rail Cost Adjustment Factor* (not printed), served December 21, 1992. The re-based adjusted RCAF for the fourth quarter of 1992 was .862. Thus, maximum first quarter 1993 RCAF rate levels could be increased up to 100.1 percent of maximum fourth quarter 1992 RCAF rate levels. Ex Parte No. 290 (Sub-No. 5)(93-2), *Quarterly Rail Cost Adjustment Factor* (not printed), served March 19, 1993. Ex Parte No. 290 (Sub-No. 5)(93-3), *Quarterly Rail Cost Adjustment Factor* (not printed), served June 18, 1993. Ex Parte No. 290 (Sub-No. 5)(93-4), *Quarterly Rail Cost Adjustment Factor* (not printed), served September 20, 1993.

vice exceeds the "jurisdictional threshold" ratio. By statute, this ratio may not exceed 180% or fall below 170%.⁶⁹ A key element in computing the jurisdictional threshold is a figure known as the railroad's "cost recovery percentage",⁷⁰ the revenue required to cover a railroad's costs expressed as a percentage. For this fiscal year, the Commission's review of the cost recovery percentage calculations using 1991 data would have raised the jurisdictional threshold to over 180%, however, because that is the statutory maximum.⁷¹

In the prior fiscal year, the Commission proposed to revise its procedure for calculating the cost recovery percentage by adopting a new procedure for apportioning the savings generated by volume movements, a procedure known as the "make-whole adjustment."⁷² The Commission proposed to calculate the make-whole adjustment on an individual carrier basis rather than on a regional basis to produce a more precise calculation. The agency adopted the make-whole adjustment proposed for the cost recovery percentage and extended the revised make-whole adjustment to its general purpose costing system.⁷³

In Fiscal Year 1993, the Commission revised new car-hire rules adopted in Fiscal Year 1992. Last fiscal year, the agency proposed new rules that would de-prescribe car hire rates for existing rail cars over a ten-year period, imme-

diately de-prescribe car hire rates for new cars, and allow parties to seek either arbitration or Commission prescription when negotiations to establish car hire rates for deprescribed cars are unsuccessful.⁷⁴ In a decision issued in November 1992 in response to filed comments, the Commission adopted rules to effect the transition to deprescribed car hire rates.⁷⁵

The rules adopted in the November 1992 decision permitted each railroad, beginning on January 1, 1994, to remove its existing cars from the current prescribed car hire rate formula gradually, over a ten-year period. The decision provided that new cars would automatically become market rate cars that are no longer subject to prescribed rates as of January 1, 1994. The decision defined new cars as any cars bought on or after January 1, 1991.

The decision provided that car hire rates on cars remaining subject to the formula (known as "fixed rate" cars) would be prescribed at the level that they were set under the Commission's prescription as of December 31, 1990. Car hire rates on market rate cars would be governed by an "Arbitration Rule". Under the Arbitration Rule railroads are to negotiate independently their car hire rates with their connecting carriers and, when negotiation is not successful, to enter "baseball style" arbitration. In baseball style arbitration, the arbitrator will select between the best and final offers of the parties and award the rate that most closely approximates a market rate. The decision provided that a

⁶⁹ 49 U.S.C. 10709(d)(2).

⁷⁰ 49 U.S.C. 10709(d)(5)(A).

⁷¹ Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served March 23, 1993.

⁷² Costs estimated by formulas sometimes do not reflect differing operational efficiencies. The make-whole adjustment adjusts carrier costs determined by formula to account for the fact that some efficiently handled traffic (e.g., unit trains) has below-average costs while other traffic has above-average costs. See Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served May 6, 1992.

⁷³ *Cost Recovery Percentage*, 9 I.C.C.2d 450 (1993).

⁷⁴ See the unprinted joint decision served February 26, 1992 in Ex Parte No. 334 (Sub-No. 6), *Review of Car Hire Regulations*; Ex Parte No. 334 (Sub-No. 8), *Joint Petition for Rulemaking on Railroad Car Hire Compensation*; and Ex Parte No. 334 (Sub-No. 8A), *Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss*.

⁷⁵ *Railroad Car Hire Compensation—Rulemaking*, 9 I.C.C.2d 80 (1992).

railroad not participating in the arbitration agreement may bring its car hire disputes to the Commission.

In response to petitions for reconsideration, the Commission revised the rules to provide that cars rebuilt after January 1, 1991, like newly purchased cars, would be deprescribed as of January 1, 1994.⁷⁶ Other issues raised in the petitions for reconsideration—most notably the date for determining which cars are new or newly rebuilt and hence automatically deprescribed—remained pending at the close of the fiscal year.

This fiscal year the Commission exempted from rate regulation the rail transportation of motor vehicles, motor vehicle parts or accessories⁷⁷ and used motor vehicles.⁷⁸ Continuing its efforts to remove obsolete regulations, the Commission also simplified regulations governing the condition of railroad cars used to transport grain and removed redundant requirements applying only to boxcars.⁷⁹

The statute places a ceiling on the rates railroads may charge to transport nonferrous recyclable commodities. Each year the Commission calculates a statutorily mandated rate standard (or cap) expressed as a percentage relationship of revenues over variable costs (R/V/C). The standard(s) allows that, on average, rates for transportation of the nonferrous recyclable commodities cover total operating expenses including a current rate of return on capital investment. In Fiscal Year 1993, the Commission calculated R/V/C ratio caps for the Eastern and Western Regions and nationwide for each class I rail-

road.⁸⁰ Specific rate caps for the regions and individual railroads were based on the level of their respective operating costs and the variability of their costs.

In Fiscal Year 1992, the Commission instituted its first annual compliance monitoring of nonferrous recyclable traffic. Monitoring resulted from a modified joint proposal between the railroad industry and recyclable shippers. Compliance monitoring entails a comparison of the applicable R/V/C ratio cap standards with aggregated data for each of the recyclable commodity groups. These comparisons are made for the entire railroad industry as well as any carrier requesting individual consideration.

In Fiscal Year 1993, in the second annual compliance monitoring, the Commission identified 13 nonferrous recyclable commodity groups or individual commodities that were not in compliance with the R/V/C ratio standards for the year. The Commission precluded rate increases to those groups and individual commodities without first justifying the changes.

In addition to compliance monitoring, the Commission is also charged with handling complaint proceedings involving nonferrous recyclable commodities. During Fiscal Year 1993, the Commission addressed one such case involving the transportation of automobile shredder residue to two recyclable facilities.⁸¹ Damages reflected the difference between actual revenues paid and the permissible rate caps for the years 1988 through 1991.

The decision in this case was somewhat unusual because the Com-

⁷⁶ *Railroad Car Hire Compensation—Rulemaking*, 9 I.C.C.2d 253 (1992) and 9 I.C.C.2d 582 (1993).

⁷⁷ *Rail General Exemption Authority—Transp. Equipment*, 9 I.C.C.2d 263 (1993).

⁷⁸ *Rail General Exempt. Authority—Used Motor Vehicles*, 9 I.C.C.2d 884 (1993).

⁷⁹ *Bulk Grain and Grain Products—Loss And Damage Claims*, 9 I.C.C.2d 182 (1992).

⁸⁰ Ex Parte No. 394 (Sub-No. 11), *Cost Ratio For Recyclables—1993 Determination*, unprinted decisions served November 9, 1992 and January 8, 1993, and printed decision at 9 I.C.C.2d 753 (1993).

⁸¹ No. 40385, *Huron Valley Steel Corporation v. CSX Transportation, Inc., et. al.* (not printed), served October 6, 1992.

mission relied upon a hybrid approach for determining damages. That is, for one recycling facility all damages were paid by the destination carrier and in turn that carrier collected the connecting carriers' portions. Conversely, the destination carrier for the other facility requested that it only pay its damage requirement and that its connectors resolve their own damage obligations. The Commission accommodated that carrier's request. Total damages and interest for shipments transported to the two facilities amounted to \$611,012.

The Commission exempted some recyclables—those that earn less than the cost of carrying them—from all regulatory requirements⁸² except for the statutory rate cap.⁸³ The Commission concluded that the transportation market for these commodities is so highly competitive that regulation is not necessary to constrain rates to reasonable levels.

During Fiscal Year 1993, the Commission revised the prescribed, standard "bill of lading" form, where railroads acknowledge receipt of freight and contract with shippers concerning the essential details of the shipment. The Commission declined this year to deprescribe the form but proposed to clarify its terms, remove obsolete references, and allow railroads and shippers to agree on changes on the front of the form.⁸⁴

The Commission adopted new rules for the computation of interest on damages awarded by the agency.⁸⁵ Under the revised regulations interest in investigation and complaint cases is determined by the 13-week Treasury Bill rate, interest in investigation and complaint cases is compounded quarterly, and in complaint cases, floating interest rates are used.

Joint Rate Surcharges, Cancellations and Competitive Access

Competitive access refers to the ability of shippers to obtain competitive rail service from or access to railroads that do not directly serve them. Competitive access issues arise under statutory provisions regulating joint routes, joint rates, joint use of terminal facilities, and "reciprocal" switching.⁸⁶

The Commission declined to modify a 1983 decision granting the Delaware & Hudson Railway Company reciprocal switching rights over Consolidated Rail Corporation track in Philadelphia.⁸⁷ In the same decision, the agency ruled that the reciprocal switching rights were transferred to Delaware & Hudson's parent-successor, Canadian Pacific, Ltd.

An Administrative Law Judge (ALJ) issued an initial decision finding that the Waccamaw Coast Line Railroad (WCLR) failed to provide facilities for the reasonable interchange of traffic with the Mid-Atlantic Railroad Company. The ALJ required WCLR to contribute to the cost of upgrading the interchange.⁸⁸

The Staggers Rail Act of 1980 provided railroads relief from non-compensatory divisions of joint rates by allowing railroads unilaterally to apply surcharges or cancel participation in joint rates.⁸⁹ Shippers or other railroads can not block such actions unless the

⁸² *Procedures to Calculate Interest Rates*, 9 I.C.C.2d 528 (1993).

⁸³ See 49 U.S.C. §§10701, 10703, 10705, 10705a, 10742, 10763, 10765, and 11103.

⁸⁷ Finance Docket No. 29802, *Delaware and Hudson Railway Company v. Consolidated Rail Corporation—Reciprocal Switching Agreement* (not printed), served May 12, 1993.

⁸⁸ Finance Docket No. 32142, *Mid Atlantic Railroad Co., Inc. v. Horry County of the State of South Carolina and the Waccamaw Coastline Railroad Company* (not printed), served April 7, 1993.

⁸⁹ 49 U.S.C. 10705a.

⁸² *Railroad Rates on Recyclables—Exemptions*, 9 I.C.C.2d 593 (1993) and 9 I.C.C.2d 749 (1993).

⁸³ 49 U.S.C. 10731(e).

⁸⁴ Ex Parte No. 495, *Bills of Lading* (not printed), served June 28, 1993.

result led to the initiating carrier's obtaining more than 110% of variable cost. Concerned about possible competitive disadvantage to small railroads, Congress required that the Commission report annually an analysis of the preceding year's surcharge and joint-rate cancellation activity.

During the fiscal year, both large and short line railroads filed light density line surcharges.⁹⁰ Two class I railroads, CSX Transportation and Chicago and North Western, filed three surcharges,⁹¹ and 14 short line railroads filed 17 surcharges. One third of the dollar amounts for surcharges fell below \$100 with only one surcharge amount exceeding \$1,000. Most surcharges had very narrow application naming a specific commodity and connecting carrier or even a specific shipper. The Soo Line extended its previous \$400 negative surcharge on chemicals routed through the carrier between Kansas City and Chicago.⁹²

The Illinois Central, a class I railroad, the Wisconsin Central, a class II railroad, and six class III railroads filed a total of nine surcharge cancellations or revisions. Revisions took the form of increases, modified conditions, or added points to which a surcharge was applicable. The revenue impact of the sur-

charges is expected to be minor, as it has been for several years.

A relatively large number of joint rate cancellations were filed by railroads of all classes. The 150 cancellations were narrow in focus and were typically defined on a specific commodity and point to point basis. They included 17 filed by Conrail (compared to three during Fiscal Year 1992), 101 filed by other class I railroads, three filed by other class II railroads (Wisconsin Central and the Texas Mexican Railway Company), and 17 filed by class III carriers (13 were represented).⁹³ Among all of these cancellations, the most frequently named commodities were specific chemicals, iron or steel products, sugar and fertilizer. Geographically, the cancellations were widely dispersed.

In summary, the joint rate surcharge and cancellation provisions of the Staggers Rail Act continue to be used, affording flexibility where carriers need it to maintain financial viability and eliciting no evidence of competitive harm from shippers or from the short line railroads.

Freight Car Service

The Association of American Railroads (AAR) reported the daily average surplus of railroad-controlled freight cars at the end of September 1993 was 54,189 cars, compared to an average of 64,155 cars at the end of September 1992. As of October 1, 1992, class I railroads reported a combined fleet ownership of 609,001 cars, but by October 1, 1993, that ownership level had dropped to 585,644 cars. This was a net reduction in the combined class I fleet of 23,357 cars, which takes into account 2,948 cars that were installed

⁹⁰ Light density lines, for purposes of the surcharge provision, are those carrying less than 3,000,000 ton-miles of freight per mile for a revenue-inadequate carrier, or 1,000,000 ton-miles for a revenue-adequate carrier, in the most recent calendar year for which data are available. Carriers are authorized to apply light density line surcharges covering up to 100 percent of the reasonably expected costs of continuing to operate a line.

⁹¹ All counts of surcharges and cancellations cover those items becoming effective during FY 1993, i.e. October 1, 1992 to September 30, 1993, including those actually filed prior to the beginning of the fiscal year.

⁹² While railroad carrier authority to impose commodity surcharges (i.e., not necessarily on light density line traffic) expired on September 30, 1984, negative surcharges (i.e., allowances) may, under a Commission exemption, still be applied.

⁹³ For 11 joint rate cancellations, neither the initiating carrier nor its class are determinable from the tariff filing. A cancellation filed by Southern Pacific but withdrawn after protests from shippers and other carriers is not counted in the total.

during the year and the 26,305 cars retired or otherwise transferred from the control of the class I railroads. On September 30, 1993, the entire rail car fleet of class I, II, and III railroads, private car companies, and shippers consisted of 1,170,676 cars, a reduction of 2,079 cars from the prior fiscal year.

The aggregate capacity of railroad and private freight cars in service at the end of calendar year 1992 was 106.3 million tons, a decrease of 0.7 million tons (0.7%) from the aggregate capacity of 107.0 million tons at the end of 1991. Since 1984, however, class I railroads handled a 15.8% increase in revenue ton-miles. The railroads attribute this increase to improved utilization in various types of equipment as indicated by the following table noting equipment turnaround times for Calendar Year 1992.

	Calendar Year			
	1977	1987	1987	1992
Turnaround Time—Days:				
Box.....	28.3	44.5	32.4	33.5
Refrigerator.....	36.8	47.7	41.2	33.4
Gondola.....	22.8	24.7	16.0	12.4
Hopper.....	15.8	16.8	12.1	11.6
Covered Hopper....	24.0	34.1	25.4	27.0
Flat.....	14.5	17.4	10.1	9.9
Average All Cars..	22.2	26.9	18.8	18.0

Source: Association of American Railroads.

The AAR reported that Fiscal Year 1993 freight car loadings by class I railroads totaled 15,847,732, an increase of 18,126 cars from the Fiscal Year 1992 car loading total of 15,829,606.⁹⁴ Individual commodity loadings for fiscal year 1993 ranked coal first with 5,982,916 cars loaded, a decrease of 238,805 cars from the 6,221,721 cars loaded with coal in Fiscal Year 1992.

Grain ranked second in total loadings with 1,456,776 cars, up slightly from the 1992 loading figure of 1,389,337 cars. Chemicals ranked third in total loadings with 1,422,583 cars during the reporting period, an increase of 7,094 carloads over the 1,415,489 cars loaded in Fiscal Year 1992. Car loadings of motor vehicles and equipment increased by 102,433, up from 880,585 cars in Fiscal Year 1992 to 983,018 cars in Fiscal Year 1993.⁹⁵ Overall, loadings increased in 11 of 19 commodity groups in Fiscal Year 1993.

Class I railroad loadings of trailers and containers increased by 451,528 units, up from 6,511,163 units in Fiscal Year 1992 to 6,962,691 units in Fiscal Year 1993. Container loadings increased by 7.9%, while trailer loadings increased by 5.9%.

The total locomotive ownership of class I railroads consisted of 18,641 units on October 1, 1993, compared to 18,839 units on October 1, 1992, a 198-unit decrease. At the end of Fiscal Year 1993, class I railroads had 138 multi-purpose locomotives on order.

Passenger Service

State and local entities are aggressively pursuing the lease or purchase of rail lines that are suitable for local or regional mass transit operations. The Commission facilitates these development projects for urban rail mass transit systems by granting abandonment or discontinuance of service exemptions for rail lines that will be used for passenger rather than freight service.⁹⁶ These may then be used to expand or develop commuter operations.

⁹⁵ Fiscal year 1993 data includes used vehicles previously reported under another commodity category.

⁹⁶ See e.g., Docket No. AB-12 (Sub-No. 143X), *Southern Pacific Transportation Company—Discontinuance of Service Exemption—In Ventura County, CA* (not printed), served November 30, 1992.

⁹⁴ The fiscal year 1992 loading figures have been revised during the course of this reporting year and thus differ from the data reported in the Commission's previous annual reports.

One major area of concern to the Commission is the ability of freight carriers to continue operations when their lines are shared by commuter operations. This year the Commission instituted an investigation into shared use facilities for new commuter operations in southern California.⁹⁷ The key question is whether the sharing of facilities is structured to ensure uninterrupted service to freight shippers and receivers.⁹⁸

Directed Service

The Interstate Commerce Act authorizes the Commission to direct carriers to provide service over another carrier's lines in emergency situations when a failure to provide rail service occurs. During the past fiscal year, the agency authorized The Great Western Railway Company, d/b/a the Platt Valley Railway, to operate as a "Directed Railroad Company," uncompensated and without Federal subsidy over the lines

of the Denver Railway, Inc. (DRI).⁹⁹ Shippers had complained that DRI had failed to provide regular service since April 1992 and had ceased service altogether in November 1992.

A second directed service order authorized the Delaware-Lackawanna Railroad Company, Inc., to operate over the Pocono Northeast Railway, Inc., when that carrier ceased operations over its entire system due to financial difficulties.¹⁰⁰

The Commission requires railroads to operate or allow the operation of passenger trains of the National Railroad Passenger Corporation (Amtrak) under the Rail Passenger Service Act of 1970.¹⁰¹ Emergency orders are issued whenever a railroad company operating an Amtrak train cannot move the train over its normal route and Amtrak requests movement over an alternate route that exists over the lines of another railroad. Designated agents of the Commission's Office of Compliance and Consumer Assistance issued three emergency orders¹⁰² granting permission to Amtrak passenger trains to use alternative routes to reach their destinations.

⁹⁷ Finance Docket No. 32173, *Orange County Transportation Authority, Riverside County Transportation Commission, San Bernardino Associated Governments, San Diego Metropolitan Transit Development Board, North San Diego County Transit Development Board—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company*; Finance Docket No. 32173 (Sub-No. 1), *Orange County Transportation Authority and Riverside County Transportation Commission—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company* (not printed), served April 8, 1993; embracing Finance Docket No. 32172, *Los Angeles County Transportation Commission—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company*; Finance Docket No. 32172 (Sub-No. 1), *Los Angeles County Transportation Commission—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company*.

⁹⁸ Finance Docket No. 32279, *Norfolk and Western Railway Company—Petition for Declaratory Order—Lease of Line in Cook and Will Counties, IL to Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois* (not printed), served May 28, 1993.

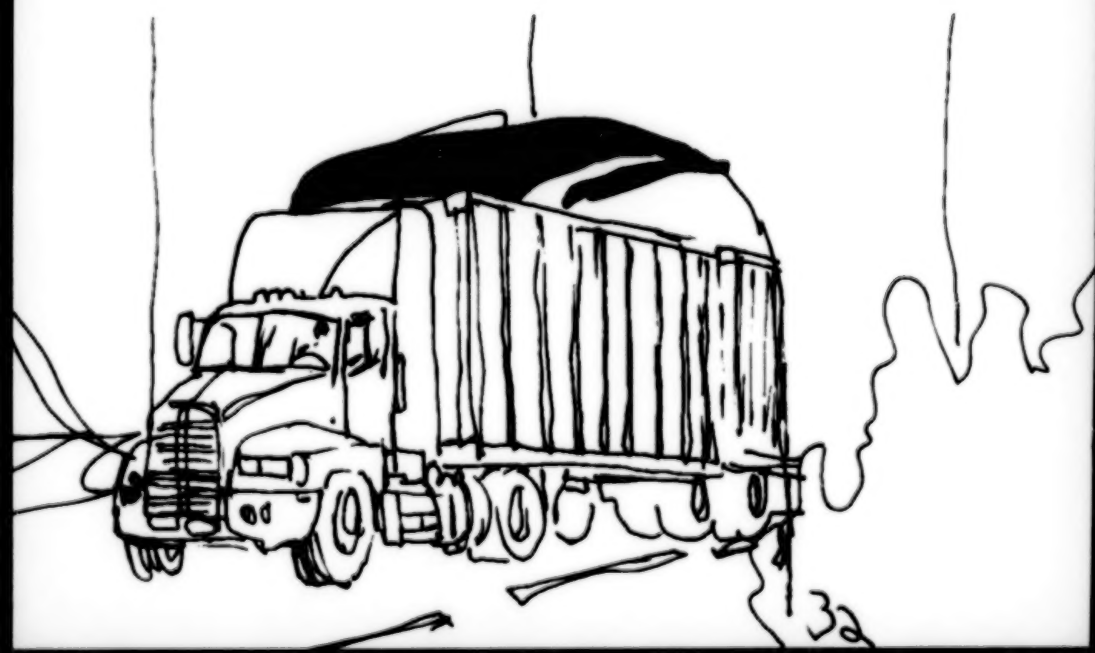
⁹⁹ Directed Service Order No. 1512, *Rocky Mountain Pipe Company/Fagan Iron & Metal, Inc./Dry Wall Products of Denver, Inc./Christain Salvesen Inc./Power Assist Co./Crystal Packaging, Inc./Firestone Building Products Company—Request for Directed Service—Authorizing The Great Western Railway Company (DBA/ Platt Valley Railway) to operate Lines of Denver Railway, Inc.—Denver, Colorado—As Directed Carrier* (not printed), served January 8, 1993.

¹⁰⁰ Directed Service Order No. 1513, *Delaware-Lackawanna Railroad Company Inc.—Directed Service—Pocono Northeast Railway, Inc.* (not printed), served September 28, 1993.

¹⁰¹ 49 U.S.C. 562.

¹⁰² See 49 U.S.C. 562(c).

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TRUCKING COMPANIES

Highlights of the Year

- ICC-regulated trucking companies have increased from 20,000 in 1980 to over 53,000 today. The number of authorized brokers has grown from fewer than 100 in 1980 to nearly 8,000 in 1993.
- The ICC-authorized motor carrier industry generated approximately \$80 billion in trucking revenues.
- Operating revenues and revenue tons hauled by 100 of the largest trucking companies rose for the first 9 months of the fiscal year compared to the same period last year while earnings and net carrier operating income fell.
- The Commission continued to receive numerous undercharge complaints, either on court referral or by a shipper's petition for declaratory order.
- The Commission determined its market-based methodology for deciding rate reasonableness in undercharge matters.
- The Commission began implementation of a simplified, base-state insurance registration system to replace the previous multi-state registration system.
- The Commission rejected approximately one application for motor carrier operating authority per week based on the applicants' "unsatisfactory" safety fitness rating.
- Commission surveyed over 44,000 non-reporting motor carriers to determine operating revenues.

TRUCKING COMPANIES

Financial Condition

The earnings of 100 of the largest trucking companies decreased during the first 9 months of Fiscal Year 1993, compared to the same period of Fiscal Year 1992.¹ Net carrier operating income fell 8.1% and ordinary income declined 19.4%. Operating revenues and revenue tons hauled rose 6.1% and 9.2%, respectively, reflecting the moderate recovery in the national economy. However, earnings decreased.²

	(Figures in Thousands)	
	First 9 Months FY 1993	First 9 Months FY 1992
Carrier Operating		
Revenues	\$18,827,500	\$17,740,583
Net Carrier		
Operating Income	656,288	714,300
Ordinary Income	285,933	354,936
Revenue Tons		
Hauled	156,960	143,715

Motor carriers face intense competition from for-hire and private carriers, as well as other modes of transportation. Within the ICC-regulated trucking sector alone, the number of carriers grew from under 20,000 in 1980 to more than 53,000 in 1993.

Since the Motor Carrier Act of 1980 (MCA), the number of motor carriers

holding contract authority and/or 48-state authority has increased. Contract authority allows motor carriers the flexibility to tailor specific service features to individual customers, and contract rates need not be filed at the Commission. Prior to the MCA, only one-third of all ICC-authorized motor carriers held contract authority, and those carriers were limited to servicing eight shippers only. In 1993, about 80% of ICC-regulated carriers held contract authority with no shipper limit. Similarly, prior to the MCA, only 100 carriers held 48-state authority, whereas today 20,000 carriers are authorized to provide such service. Additionally, brokerage authority has grown dramatically, with the number of ICC-licensed property brokers increasing from fewer than 100 in 1980, to nearly 8,000 in 1993. Brokers match shipper loads with available carriers, intensifying rate and service pressures on carriers.

The ICC-authorized motor carrier industry generates approximately \$80 billion in revenues annually. Among the 100 largest carriers in the industry, United Parcel Service tops the revenue list, with its ground and air carrier services generating approximately \$13 billion and \$16 billion, respectively, in 1992. The remaining 100 largest motor carriers generated an additional \$27 billion, with major revenue shares going to traditional less-than-truckload (LTL) carriers, household goods carriers, truckload (TL) general freight carriers, and various specialized commodities haulers.

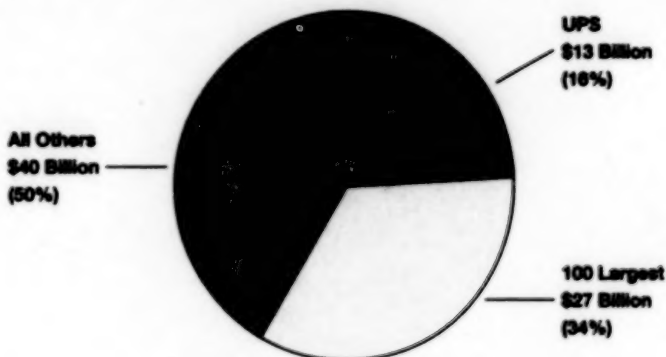
Accounting and Reporting

The Commission initiated a survey of nearly 44,000 non-reporting motor carriers of property to identify those with annual operating revenues at the threshold that would require them to file annual and quarterly reports. The responses will be entered into an automated data base and analyzed to ensure uniform reporting.

¹ This does not include the United Parcel Service (UPS) carriers and certain carriers failing to file timely data. The UPS carriers are not included because their operations (shipments of relatively small packages) are generally dissimilar from other carriers in the motor carrier industry. Figures for the last 3 months of the fiscal year were not available when this report went to press.

² Revenues, earnings, and traffic volume data are from Motor Carrier Quarterly Report Form QFR.

**Motor Carrier Annual Revenue
ICC Authorized Carriers**
(Showing Dollars and Percent of Total)



Mergers

Motor carriers continued to use the Commission's expedited exemption and small carrier transfer procedures³ to effect changes in their financial structures and to transfer operating authorities.⁴

Rates

The primary issue before the Commission in many pending undercharge cases is the reasonableness of the filed rates sought to be collected by the carrier's representative. This fiscal year the Commission set out a market-based approach for determining the reasonableness of a motor carrier rate sought to be applied to a past shipment.⁵ The agency concluded that the reasonableness of a challenged rate for a past shipment should be determined by

comparing that rate with the rates within a market-based cluster of price and service alternatives available at the time the shipment moved. A challenged rate above the comparable rates within the cluster is presumed unreasonable.

The Commission attempted to curb widespread billing abuses by nonoperating motor carriers by promulgating rules that required a nonoperating carrier or its successors-in-interest may not unilaterally disavow the tariff rate under which a past shipment moved, or the contract if the shipment moved as contract carriage, without prior Commission review and authorization.⁶

³ See 49 CFR Parts 1186 and 1181, respectively.

⁴ The transactions are permitted under 49 U.S.C. 11343(e) and 10925, respectively.

⁵ *Georgia-Pacific Corp.—Pet. for Declar. Order*, 9 I.C.C.2d 103 (1992), affirmed with clarification, 9 I.C.C.2d 796 (1993).

⁶ *Nonoperating Motor Carriers—Collection of Undercharges*, 8 I.C.C.2d 742 (1992) (*Nonoperating Motor Carriers*), (effective date extended) 9 I.C.C.2d 33 (1992); (petitions for administrative stay of rules denied) 9 I.C.C.2d 35 (1992); to be codified at 49 CFR 1321. In *Ex Parte No. MC-208A, Lyons Transportation Lines—Collection of Undercharges (Preliminary Review)—Released Rates, Neeco, Inc.* (not printed), served February 24, 1993, the petitioning carrier was allowed to pursue a specific claim and others that are substantially similar to it.

The Commission directed all nonoperating carriers to inform shippers subject to undercharge claims that prior to settling an undercharge claim, the Commission will review the claim to determine its validity.⁷ A reviewing court set aside the regulations,⁸ which then were vacated.⁹

The Commission stepped up the processing of undercharge claims referred to the Commission by the courts, bolstered by the Supreme Court's holding that shippers may have their rate reasonableness claims considered in advance of a judgment on a carrier's undercharge suit.¹⁰ In an increasing number of cases, the Commission applied its so-called "void-for-nonparticipation" rule, holding that carriers not parties to mileage guide or classification tariffs are not legally permitted to use these tariffs to determine their rates, and that these tariffs are, therefore, void for application.¹¹

The Commission continued to be confronted with undercharge cases in which trustees and agents for nonoperating carriers claimed that prior service offered and billed as contract carriage

was in fact common carriage.¹² The Commission reviewed the requirements for establishing motor contract carrier transportation in the context of an undercharge case. The agency concluded that under the Interstate Commerce Act and implementing regulations, motor contract carrier services are not converted to motor common carrier services by a deficiency in the contract or in the manner in which services were provided.¹³

In many court-referred undercharge cases, poorly developed records precluded the Commission from making any determination as to rate applicability or rate reasonableness. In one case, the carrier challenged the Commission's determination that the party filing an undercharge claim has the burden of identifying the filed tariff upon which its claim is based.¹⁴ On further review, the Commission directed all undercharge claimants to advise shippers of the filed tariffs on which a claim for undercharges is based.¹⁵

⁷ *Nonoperating Motor Carriers*, 9 I.C.C.2d 398 (1993).

⁸ *Vedder J. White et al. v. United States*, 989 F.2d 643 (3d Cir. 1993).

⁹ *Nonoperating Motor Carriers*, 9 I.C.C.2d 777 (1993).

¹⁰ *Reiter v. Cooper*, 113 S. Ct. 1213 (March 8, 1993). The Supreme Court reversed the Fourth Circuit's ruling that the filed rate doctrine requires shippers to pay the filed rate first and bring a separate unreasonable rate action subsequently.

¹¹ *Roberts & Dybdahl Inc.—Pet. for Declar. Order*, 9 I.C.C.2d 193 (1992), relying upon the earlier *Jasper Wyman & Son et al.—Pet. for Declaratory Order*, 8 I.C.C. 246 (1992). Related litigation in the courts is described in the Court Actions section of this report.

¹² *No. 40779, General Management, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Best Refrigerated Express, Inc.* (not printed), served October 20, 1992, petition to reopen denied by decision (not printed), served March 1, 1993; *No. 40800, Pamida, Inc. v. Silvey Refrigerated Carriers, Inc.* (not printed), served February 19, 1993; *No. 40348, Commerce Express, Inc.—Petition for Declaratory Order—Certain Rates and Practices of United Shipping Company, Inc.* (not printed), served October 1, 1992, petition to reopen denied by decision (not printed) served June 10, 1993.

¹³ *Ford Motor Co. v. Security Services f/k/a Riss Int'l.*, 9 I.C.C.2d 892 (1993). Related litigation in the courts is described in the Court Actions section of this report.

¹⁴ *Vertex Corp. Pet. Declar. Order Rates and Practices*, 8 I.C.C.2d 701 (1992) (*Vertex I*).

¹⁵ *Vertex Corp.—Pet. for Declar. Order—Rates and Practices* 9 I.C.C.2d 688 (1993), (*Vertex II*), petition to modify denied in Docket No. 40425, *Vertex Corporation—Petition for Declaratory Order—Certain Rates and Practices of Southwest Equipment Rental, Inc., D/B/A Southwest Motor Freight* (not printed), served August 11, 1993.

In the rate bureau area, the Commission approved the merger of Central States Motor Freight Bureau, Inc., into Middlewest Motor Freight Bureau, Inc. (MWFB).¹⁶ The Commission also approved an amendment to MWFB's collective ratemaking agreement that would permit the MWFB General Rate Committee to engage in ratemaking within the Central States Territory.

The Commission granted an application by the Household Goods Carriers' Bureau, Inc., for authority to increase excess value charges for released rates shipments and to restructure excess value charges for storage-in-transit shipments.¹⁷

Operating Rights

The Intermodal Surface Transportation Efficiency Act of 1991 amended the law governing motor carriers' registration of their operating authorities and vehicles with the states.¹⁸ As required by the new law, the Commission adopted regulations replacing a multi-state registration system (known as the bingo stamp program) with a simplified, base-state insurance registration system that does not involve the identification of specific vehicles.¹⁹ Under the new regulations, an interstate carrier must (1) file proof of insurance with a single participating registration state, (2) pay fees to that state to be allocated among all participating states in which the carrier operates, and (3) keep in each of its vehicles a copy of a

receipt issued by its registration state. States can charge no more than the per-vehicle amount they charged or collected as of November 15, 1991, under the old bingo stamp program.

The Commission reaffirmed findings that the regulatory status of a movement into a state does not dictate the interstate or intrastate nature of a subsequent, single-state movement by motor carrier.²⁰ The Commission pointed out that the nature of the subsequent motor movement is not affected by whether the initial movement across state lines is in regulated, private, or other exempt carriage.

The Commission repealed regulations²¹ requiring that private carriers engaged in incidental common or contract carrier operations conduct these operations independently and maintain separate records for them, having determined that the regulations were burdensome and that a compelling regulatory reason for their continuance no longer existed.²²

Safety

Under the Commission's motor carrier safety fitness policy affecting both licensing and finance matters, a motor carrier holding an "unsatisfactory" safety fitness rating from the U.S. Department of Transportation (DOT) is prohibited from obtaining operating authority.²³ The Commission rejected approximately one application for operating authority per week based upon its safety fitness policy.

The Commission proposed to revise the commodity-based service descriptions used to define the scope of opera-

¹⁶ Section 5a Application No. 34, *Middlewest Motor Freight Bureau, Inc. and Central States Motor Freight Bureau, Inc.—Merger Agreement* (not printed), served July 9, 1993.

¹⁷ *Released Rates of Motor Common Carriers of 194G*, 9 I.C.C.2d 523 (1993).

¹⁸ 49 U.S.C. 11506, enacted in Section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law No. 102-240.

¹⁹ *Single State Insurance Registration*, 9 I.C.C.2d 610 (1993), adopting new regulations at 49 CFR Part 1023.

²⁰ *Amoco Oil Co.—Pet. for Declaratory Order*, 9 I.C.C.2d 268 (1993).

²¹ See 49 CFR 1004.3.

²² *Interpretations and Routing Regulations*, 9 I.C.C.2d 394 (1993).

²³ *Safety Fitness Policy*, 7 I.C.C.2d 921 (1991), and 8 I.C.C.2d 123 (1991).

tions in new grants of truck, bus, and broker operating authorities. The proposal is intended primarily to reinforce the Commission's interest in motor carrier safety fitness and insurance compliance and to accommodate revisions to DOT's hazardous materials regulations. The Commission proposes to replace the commodity-based service descriptions with a reference only to the minimum levels of public liability coverage that based upon the hazardous materials service categories.²⁴ The proposal was issued as a supplemental notice to the Commission's prior request for comments on a proposal that would result in the Commission replacing the current licensing application form, Form OP-1, with six separate mode-specific application forms and adopting corresponding revisions to the Commission's licensing regulations. In response to the comments

received, the Commission will issue a final decision in Fiscal Year 1994.

Foreign Carriers

Motor carriers domiciled in Mexico filed 336 applications for a certificate of registration (CR) with the Commission. A CR authorizes the carrier to operate within limited territories within the United States, namely municipalities and commercial zones along international borders.²⁵ A majority of the applications were granted.

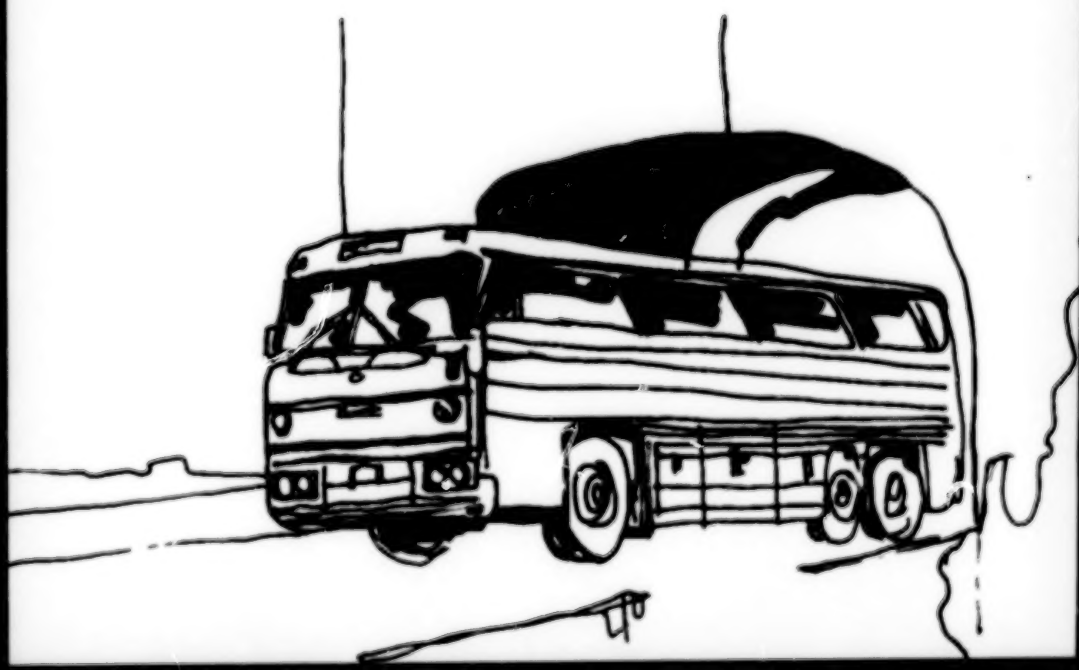
The Commission modified its regulations to allow Mexican-domiciled motor carriers to file their applications for certificates of registration with the Commission's regional offices either in Chicago or San Francisco, rather than with the Commission's headquarters in Washington, DC. This modification will expedite the processing of those applications.²⁶

²⁴ Ex Parte No. 55 (Sub-No. 86), *Revision of Licensing Application Forms and Corresponding Regulations* (not printed), served September 16, 1993.

²⁵ See 49 U.S.C. 10530 and 10922(1) (2) (B) (ii) and (iii).

²⁶ See 49 CFR 1171; *Delegation of Authority—Technical Amendments*, 9 I.C.C.2d 652 (1993).

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BUS COMPANIES

Highlights of the Year

- Commission released staff report assessing operations and practices of the intercity bus industry.
- Greyhound achieved substantial improvement in earnings and financial condition.
- Operating revenues and ridership for the nine largest regional bus companies improved for the first 9 months of the fiscal year.

BUS COMPANIES

Financial Condition

Greyhound Lines, Inc. (Greyhound) is the nation's only transcontinental bus company and accounts for about 70% of total intercity class I bus carrier revenues. Greyhound continued to demonstrate a substantial improvement in earnings and financial condition in Fiscal Year 1993. Revenues declined 3.7% due primarily to discounting programs, as passenger volume remained constant. In May 1993, Greyhound received approximately \$93 million from the sale of almost 4.7 million shares of common stock to the public.

Greyhound Lines, Inc.

	(Figures in Thousands)	
	First 9 Months FY 1993	First 9 Months FY 1992
Operating Revenues.	\$444,572	\$461,805
Net Carrier		
Operating Income.	30,296	16,959
Ordinary Income		
(Loss)	11,503	(5,325)
Revenue Passengers		
Carried	10,487	10,481

Operating revenues and ridership of the nine largest regional carriers for the first 9 months of Fiscal Year 1993 rose 4.1% and 3%, respectively, as compared to the same period of 1992. Net carrier operating income rose about \$0.1 million, and ordinary income increased \$0.5 million.¹

¹ Revenues, earnings, and ridership data for Greyhound and these nine regional carriers are obtained from quarterly reports filed by class I motor carriers of passengers. Figures for the last 3 months of the fiscal year were not available when this report went to press.

Nine Largest Regional Bus Carriers

	(Figures in Thousands)	
	First 9 Months FY 1993	First 9 Months FY 1992
Operating Revenues.	\$125,611	\$120,709
Net Carrier		
Operating Income.	4,151	4,065
Ordinary Income	636	116
Revenue Passengers		
Carried	8,187	7,946

Study on Intercity Bus Industry

In July 1993, the Commission issued a staff study on the intercity regular-route bus industry prepared by the Office of Economics with the assistance of the Office of Compliance and Consumer Assistance (OCCA).² This comprehensive study describes the bus industry's operations and practices and includes the staff's assessment of certain assertedly anticompetitive activities of Greyhound.

OCCA assisted in the study to determine the quality of service provided to the public. OCCA's field staff visited bus passenger terminals that serve two or more carriers and serve cities with a population of 200,000 or more. A total of 55 terminals were visited, including six that are not owned or controlled by Greyhound. At each terminal, the staff's mission was to observe the operations of the carrier in control in order to determine its relationship with the tenant carriers and to observe the total number of scheduled departures from the terminal. Particular attention was paid to the practices and procedures of the carrier operating the terminal concerning the sale of tickets, honoring of tick-

² Office of Economics Staff Study, *The U. S. Intercity Regular Route Passenger Bus Industry*, released July 25, 1993.

ets of other carriers, handling of reservations for all carriers serving that terminal, and any other factor that might affect the quality of the bus service provided at that terminal.

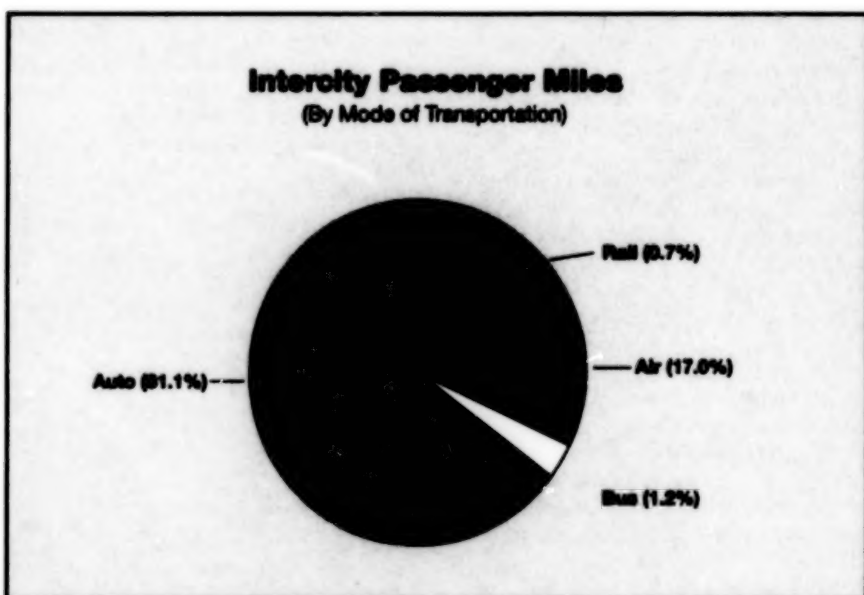
To develop an industry profile on each carrier included in the study, the field staff also visited 31 independent bus carriers whose service areas represent all regions of the country, each of which had annual revenues ranging from less than \$100,000 to approximately \$24 million and whose service areas represent all regions of the country. The study indicated that the bus industry is a small part of a broader and highly competitive intercity passenger market and represents only about a 1.2% share of total intercity passenger-miles (see the following graph).

Today, only 110 of the more than 4,600 intercity passenger carriers with active ICC operating authority provide intercity regular route service, and Greyhound is the only carrier with a national network.

The study revealed that objections to Greyhound's new business practices focus on five areas: (1) access and joint use of Greyhound terminals; (2) terminal services provided by Greyhound such as ticket sales, information and announcements, and telephone information; (3) honoring of competitors' tickets; (4) publication of carrier schedules; and (5) Greyhound's new computer reservation system.

The field staff's terminal inspections support some of the complaints against Greyhound. Recent terminal rent increases and other changes have created financial and operating hardships for many carriers. However, no findings of uniform abuse or intentional mistreatment of tenant carriers, anti-competitive practices leading to serious service deterioration, or monopoly pricing to passengers were made. Greyhound is in the process of reexamining some of its new policies.

The staff study concluded that it is in the best interest of all carriers to work to-



gether to revitalize the industry and recommended that no immediate Commission action be taken. The study also recommended that the ICC staff continue to monitor the industry and that if there are indications of an adverse change in circumstances, the Commission could take action to protect the consumers of intercity bus service and competition within the intercity bus industry.

Service

In Fiscal Year 1993, the Commission received 253 complaints concerning intercity passenger service. This represents a 3% increase over the 246 complaints received during Fiscal Year 1992. The areas of complaint generally involved failure to provide scheduled service, delays in providing service in accordance with published operating schedules, service provided by unauthorized carriers, and occasional equipment breakdowns. The Commission conducted 35 compliance surveys of passenger carriers.

The Commission continued its program of passenger carrier inspections at tourist attractions and recreational centers to determine compliance with the Commission's insurance and licensing regulations. This program resulted in the inspection of 84 passenger vehicles. Most instances of non-compliance with operating authority requirements were corrected by voluntary discontinuance of service until operating authority was secured and evidence of insurance was filed with the Commission. In some instances, non-compliance with insurance regulations required enforcement action, which resulted in consent agreements and civil injunctions. Enforcement actions against motor passenger carriers for violations of those involving insurance resulted in 27 civil injunctions, 10 civil forfeiture actions, 35 consent agreements, and seven violation notices.

The Commission also continued monitoring the intercity transportation of

passengers by vans to assure that operators hold authority from the Commission and maintain required levels of insurance. Consistent with the monitoring project, special attention was devoted to new services in the New York City metropolitan area and at various points along the United States-Mexico border.

Operating Rights

The Commission granted 908 applications for authority to transport passengers. The majority of common carrier and contract carrier applicants sought authority to conduct charter and special operations, and the remainder sought authority to provide scheduled service over specified routes.

Rates

During the fiscal year, only one carrier initiated a proceeding under the Commission's procedures³ for preempting state rate jurisdiction and authorizing intrastate rate increases in situations in which a state has denied, or failed timely to consider, a request for increasing rates.⁴ In that case, the Commission authorized the proposed fare increase after finding that the carrier had shown that its intrastate passenger fares were significantly lower than its current interstate fares for comparable services within the state.

³ See 49 U.S.C. 11501 (e) (2).

⁴ No. MC-C-30206, *Plymouth & Brockton Street Railway Company—Petition for Review—Massachusetts Intrastate Rates* (not printed), served December 2, 1992.

INTERMODAL TRANSPORTATION

There was a tremendous increase in intermodal traffic in the railroad industry during the fiscal year. Over 6,700,000 trailers and containers were moved by rail carriers in 1992, compared to the approximately 3,000,000 units moved in 1980.¹ Railroads have responded to this traffic growth by constructing new intermodal truck, barge, and port facilities, replacing bridges, tunnels and overpasses that restrict double-stacked container traffic, and acquiring motor carriers.

The Commission approved the common control of Customized Trans-

portation, Inc., by CSX Corporation and its subsidiary, CSX Intermodal, Inc.,² and Union Pacific Corporation's common control of Skyway Freight Systems, Inc.³ The Commission approved indirect control by KKR Associates and TW Associates, which control several trucking companies and two class III railroads, of Proficient Food Company and DFC Trucking Company.⁴ The Commission also authorized Consolidated Grain and Barge Company to acquire control of two motor carriers, River Bend Transport Company and River Bend Brokerage Co.⁵

² Finance Docket No. 32182, *CSX Corporation and CSX Intermodal, Inc.—Control—Customized Transportation Inc.* (not printed), served December 18, 1992.

³ Finance Docket No. 32011, *Union Pacific Corporation—Control—Skyway Freight Systems, Inc.* (not printed), served December 18, 1992.

⁴ Finance Docket No. 32179, *KKR Associates and TW Associates—Control Exemption—Proficient Food Company and DFC Trucking Company* (not printed), served November 13, 1992.

⁵ Finance Docket No. 32079, *Consolidated Grain and Barge Company—Control Exemption—River Bend Transport Company and River Terminals Transport, Inc., MG Rail, Inc., and Garden Spot and Northern Corporation* (not printed), served February 11, 1993.

¹ Association of American Railroads, *Railroad Facts* (Washington, DC 1993).

FREIGHT FORWARDERS, WATER CARRIERS, PROPERTY BROKERS, AND PIPELINES

Household Goods Freight Forwarders

The Commission regulates over 700 household goods freight forwarders. Household goods freight forwarders are required to be licensed by the Commission and to file tariffs and evidence of insurance with the ICC. These companies pick up shipments and consolidate them with other shipments. They arrange for transportation services of regulated moving companies who transport the consolidated shipments to various locations. The household goods freight forwarder then delivers the individual shipments to the customers. The Commission licensed 104 household goods freight forwarders during the fiscal year.

In an action affecting both household goods freight forwarders and motor carriers of household goods,¹ the Commission authorized the latter to increase the valuation charge² on line-haul shipments³ and to change the valuation charge on shipments stored in transit. The basis of the valuation charge was changed from a percentage of the storage charges to a percentage of the declared value of the shipment.⁴

In another proceeding the Commission rescinded Released Rates Order No. FF-289, which had precluded household goods freight forwarders from increasing and restructuring their

valuation charges.⁵ This action allowed household goods freight forwarders to publish the same released rates as household goods motor carriers.⁶

Water Carriers

The Commission's jurisdiction over water carriers is limited because the majority of water carrier operations are either exempt from ICC regulation by statute or subject to the jurisdiction of the Federal Maritime Commission. In general, the Commission regulates the interstate transportation of passengers and non-bulk commodities. The Commission, however, does not regulate ferry service. Water carriers subject to Commission regulation are required to be licensed by the ICC and to file tariffs and evidence of insurance with the Commission. The Commission licensed six water carriers during the fiscal year. The Commission did not issue any decisions significantly affecting the water carrier industry during the fiscal year.

Pipelines

The Commission regulates the rates of all interstate pipeline transportation other than water, gas, and oil. There were two pipeline rate cases pending at the close of the fiscal year. The first involves a determination of whether certain rates exceeded a maximum reasonable level.⁷ The second proceeding is a

¹ Released rates authority allows carriers to limit their liability for loss or damage to shipments and consequently to provide transportation services at lower rates.

² A valuation charge is a fee for increased loss and damage liability based on the value set by a shipper for its traffic.

³ The valuation charge on line-haul shipments was allowed to increase from 50 cents per \$100 of declared valuation to 70 cents per \$100.

⁴ *Released Rates of Motor Common Carriers of HHG*, 9 I.C.C.2d 523 (1993).

⁵ The Commission took this action to relieve the carriers from making individual applications. The Household Goods Forwarders Tariff Bureau could not petition for the relief because its antitrust immunity was revoked in 1991. Section 5a Application No. 106, *Household Goods Forwarders Tariff Bureau* (not printed), served June 12, 1991, *aff'd* (in a decision not printed), served August 12, 1991.

⁶ Released Rates Decision No. MC-1000, *Released Rates of Freight Forwarders of Household Goods* (not printed), served June 23, 1993.

⁷ See, Docket No. 40131 (Sub-No. 1), *Ashley Creek Phosphate Company v. Chevron Pipe Line Company, et al.*

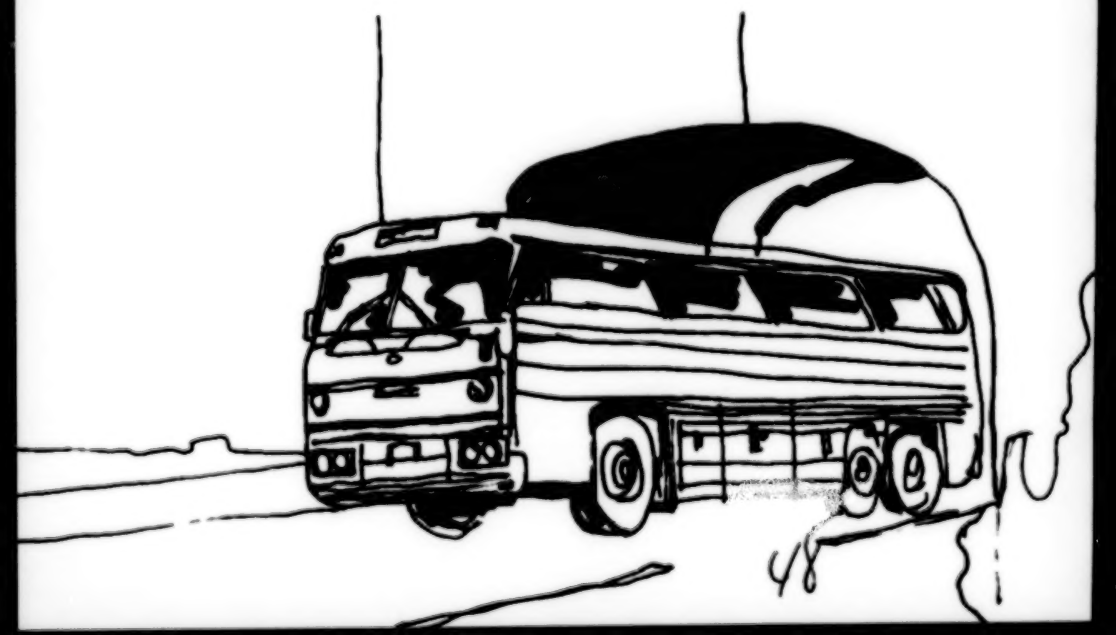
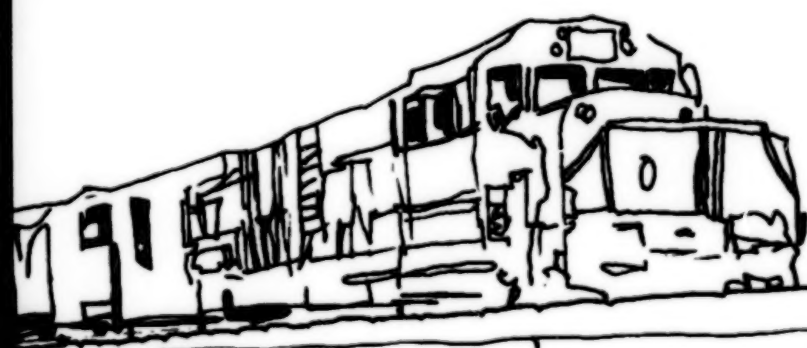
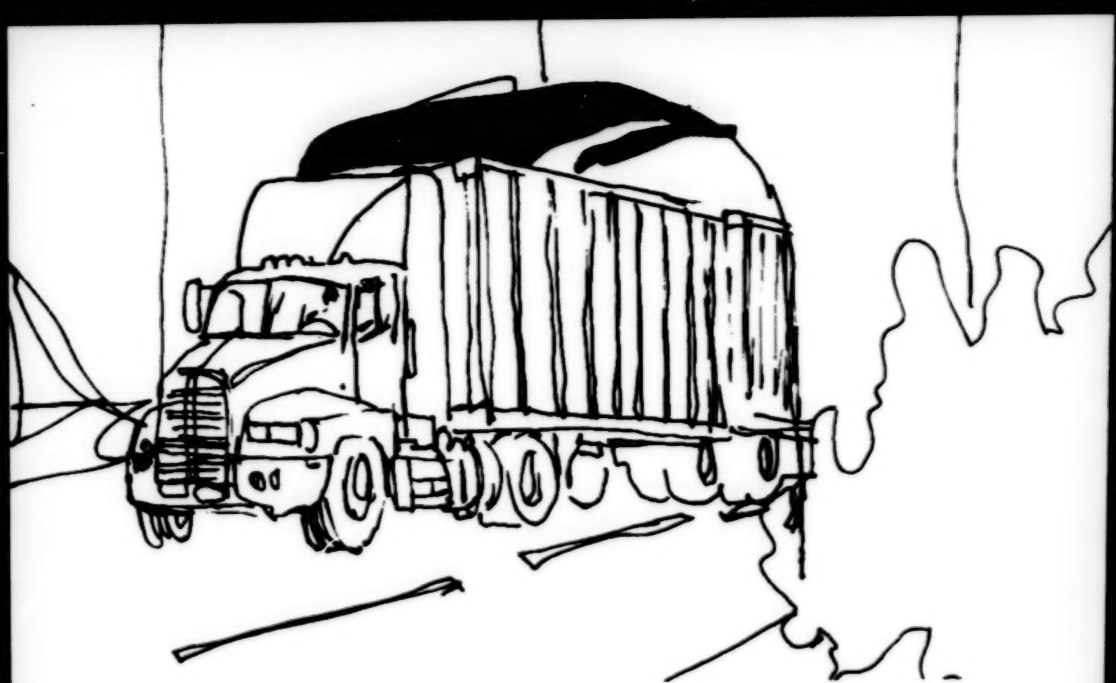
rate complaint case involving the movement of anhydrous ammonia.⁸

Property Brokers

The Commission also regulates over 8,000 property brokers and con-

tinued to license new property brokers during the fiscal year. The Commission did not issue any decisions materially affecting property brokers or reflecting new or changed policies regarding regulation of their operations.

⁸ See, Docket No. 40411, *Farmland Industries, Inc. v. Gulf Central Pipeline Company, et al.*



ENERGY AND ENVIRONMENT

Highlights of the Year

- Commission issued 140 environmental assessments.
- Commission initiated rulemaking to enhance public awareness of ICC procedures for reuse alternatives for abandoned railroad rights-of-way.
- Commission examined 18 railroad construction proposals.
- Commission denied one railroad construction due to public safety concerns.
- Commission conducted environmental review of 150 railroad finance transactions.
- Commission conducted environmental review for over 130 abandonment cases.
- Commission reviewed 10 cases involving hazardous materials and hazardous sites.
- Commission provided public with notice and guidance regarding trails use, public use, and alternative use of railroad rights-of-way.
- Commission imposed conditions in 50 cases to protect historic sites and structures.
- Commission issued brochure to facilitate understanding of ICC's environmental rules.

ENERGY AND ENVIRONMENT

The Office of Economics' Section of Energy and Environment (SEE) addresses the Commission's environmental issues. SEE examines the impact of proposed actions on the environment and recommends conditions to mitigate environmental impacts. SEE is responsible for the Commission's compliance with the National Environmental Policy Act (NEPA),¹ the National Historic Preservation Act (NHPA),² the Endangered Species Act,³ the Coastal Zone Management Act,⁴ the Energy Policy and Conservation Act (EPCA),⁵ the Clean Water Act,⁶ and other pertinent environmental statutes. SEE fulfills its responsibilities through its independent environmental review of cases. This includes the preparation of environmental impact statements (EIS) and environmental assessments and providing technical advice to the Commission on environmental matters. In Fiscal Year 1993, the Commission has conditioned its approval of various transactions by imposing requirements designed to mitigate environmental impacts. These conditions have addressed wetlands and other water resources, hazardous waste and materials, threatened and endangered species, public safety and land use, and protection of historic resources.

Rail Line Constructions

Because rail line construction is the type of Commission licensed activity that has the greatest potential for environmental impact, considerable staff resources are devoted to the environmental analyses of these proposals.

This fiscal year, SEE examined 18 rail construction proposals. These projects are located in various states throughout the country and vary in purpose, size, and the complexity of their potential environmental impacts. All of these proposals, even at the preliminary stage, require some level of environmental consultation and analysis.

A continuing trend in the construction area is the number of utilities seeking to construct rail lines to gain direct access or more competitive access to coal sources. Many of these utilities are continuing to pursue rail construction as a way to obtain low sulfur coal to meet the sulfur dioxide emission standards mandated by the 1990 Clean Air Act Amendments. Other purposes for rail constructions include more efficient operations, competitive service, better access to industrial facilities, and high-speed passenger service.

Other Finance Transactions

SEE examined approximately 150 railroad finance transactions during the fiscal year. These proceedings involved rail line acquisitions, leases and operations, and trackage rights.

Environmental review in this area has been streamlined by the revised environmental rules. For example, the Commission's environmental rules exempt from environmental review certain types of finance docket proceedings whose environmental effects are ordinarily insignificant, unless a particular action has the potential for significant environmental impacts. The operation of this exemption is illustrated by the Commission's action in licensing four small motor carriers to operate commuter bus service between Staten Island and Manhattan through New Jersey,⁷ although motor carrier licensing for

¹ 42 U.S.C. 4331-4335, and see 40 CFR Part 1500.

² 16 U.S.C. 470 *et seq.*, and see 36 CFR 800.

³ 16 U.S.C. 1531-1542. Also see the implementing regulations of U.S. Fish and Wildlife Service and National Marine Fisheries Service, 50 CFR 402.

⁴ 16 U.S.C. 1451 *et seq.*, and see 15 CFR Part 930.

⁵ 42 U.S.C. 6362(b)

⁶ 33 U.S.C. 1344, and see 33 CFR 323.1.

⁷ *Romano Transportation, Inc., Extension*, 9 I.C.C.2d 286 (1992), embracing two other applications; and *S.A.S. Express, Inc., Staten Island, NY*, 9 I.C.C.2d 438 (1993).

both passenger and freight service is generally exempt from environmental review. The City of New York requested that the Commission prepare an EIS on the cumulative effects that the additional bus service would have on Manhattan's air quality. The Commission denied the request.⁸ In so doing it adopted SEE's recommendation that these transactions were properly exempted from environmental review because licensing new passenger services in an already heavily served market would not significantly affect air quality. The refinement of the environmental rules, in this and other areas, has allowed SEE to focus its resources on those proceedings, which have the greatest potential to affect the environment.

Rail Line Abandonments

Environmental review was conducted for over 130 abandonment cases during the fiscal year. In approximately 60 abandonments, the Commission imposed conditions related to the salvage of rail properties, as recommended by SEE. In each of these cases, SEE consulted with the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Coast Guard, and other Federal, State, and local agencies to determine appropriate measures to mitigate impacts on environmental resources.

SEE routinely consults with the U.S. Fish and Wildlife Service and State officials regarding the potential impact of Commission approved actions on threatened and endangered species. During the past fiscal year, SEE recommended and the Commission imposed over 20 conditions designed to protect

wildlife. These conditions usually imposed limitations on salvage activities or required consultation with the appropriate Federal or State agency prior to salvage. Limitations on salvage activities included restricting salvage to certain times of the year when species of concern are not present or breeding in the area, and limiting salvage to the right-of-way to prevent disturbing nearby wildlife habitat.

Public concern over Commission proceedings involving hazardous materials and waste sites continues to increase. SEE reviewed 10 cases involving hazardous materials/sites during Fiscal Year 1993. In several cases, hazardous wastes within rail rights-of-way were identified, and SEE recommended remedial measures. To better address increasing concerns in this area, the Commission's environmental rules now require carriers to include in their environmental reports detailed information on hazardous materials and waste sites. The rules also require specific environmental documentation for water carrier licensing involving the transportation of hazardous materials.

Trails Use/Rail Corridor Preservation

The Commission has taken an active role in providing notice and guidance to the public regarding conversion of abandoned railroad rights-of-way to trails or other public uses. Notice and guidance to potential trails users on when and how to request the imposition of a trails use condition is provided by SEE through the EAs prepared for abandonment proceedings. In all of its EAs for abandonment cases, SEE includes a discussion of the trails/public use procedures and the potential suitability of the property for alternative use. In addition, the Commission's environmental rules specifically require railroads to provide information concerning the property's suitability for trails' use/public use. Railroads are re-

⁸ The City of New York's petitions for review of the Commission's decision were denied by the United States Court of Appeals for the Second Circuit. *City of New York v. ICC*, Nos. 92-4239, 93-4015 (2d Cir. Sept. 10, 1993). See discussion in Court Actions section of this report.

quired to publish local newspaper notices in each county affected by an abandonment exemption so that the public is notified early of the abandonment and right-of-way alternatives.

Historic Review Process

Historic resources conditions were imposed in approximately 50 cases to protect historic sites and structures. Many of the historic resources conditions imposed required the railroad to retain its interest in and refrain from altering any potentially historic sites or structures until completion of the historic review process required by the National Historic Preservation Act.⁹ Based on extensive consultations with appropriate historic officials, SEE has worked toward expediting the identification of historic properties, assessing whether the proposed actions adversely affect these properties, and determining how to best mitigate any adverse impacts.

In instances where all parties agree on appropriate mitigation, a memorandum of agreement (MOA) is signed by all the parties and transmitted to the Advisory Council on Historic Preservation for its approval. The successful completion of an MOA is a substantial undertaking, involving extensive negotiations with all parties. SEE has made

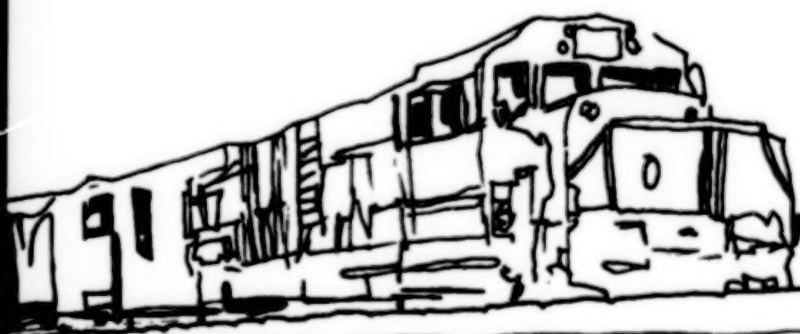
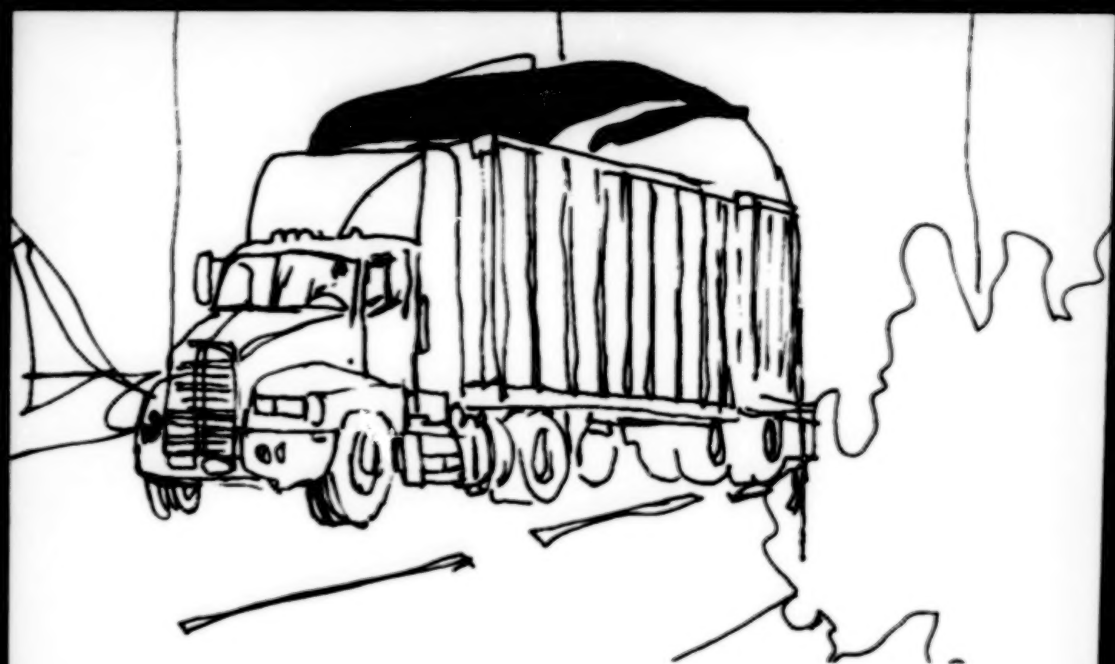
progress in this area and has completed or engaged in negotiations for approximately 15 MOAs.

When the Advisory Council on Historic Preservation does not approve an MOA or no agreement can be reached, the Commission affords the Advisory Council an opportunity to comment on the action's effect on historic resources. The Commission must then consider the Advisory Council's comments in reaching its decision. The historic review required by Section 106 of the National Historic Preservation Act can be a lengthy, multi-step process that is not always compatible with the expedited time frames applicable to many Commission proceedings. The identification of historic properties continues to be a major hurdle faced by the Commission in completing this process. The improved historic reporting requirements under the revised rules¹⁰ have helped to expedite the historic review process. The rules also reflect the Commission's statutorily limited role in the protection of historic properties. SEE continues to consult with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and other appropriate interests to develop a workable approach toward the consideration of historic preservation in Commission proceedings.

⁹ 16 U.S.C. 470f.

¹⁰ See 49 CFR 1105.8(d).

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CONSUMER PROTECTION

Highlights of the Year

- Consumer protection efforts are heavily focused in the areas of small, noncommercial shippers, unsafe and uninsured carrier operations, fraud and unethical conduct, tariff compliance, and unauthorized transportation by Mexican owned or controlled motor carriers.
- Commission guaranteed that newly authorized interstate motor carriers were adequately insured.
- Commission revoked operating authority of 4,614 motor carriers for failure to hold adequate insurance.
- Commission collected \$311,737.00 in penalties as part of its consumer protection efforts.
- Commission sought and obtained a large number of consent agreements and court approved injunctions to ensure consumer protection, including 1,817 consent agreements in insurance cases.

CONSUMER PROTECTION

Protection of Small Shippers

Small, noncommercial shippers are generally those that seek to have their household goods and personal automobiles transported in interstate commerce. Infrequent users of transportation services, they often are unable to seek redress of their grievances without assistance.

The Commission places a high priority on the protection of individual shippers of household goods. During the fiscal year, the number of household goods complaints received from shippers took a slight upturn. Commission staff received approximately 2,830 complaints against household goods carriers as compared with approximately 2,600 complaints in Fiscal Year 1992.

The Commission requires all moving companies providing interstate service to provide prospective interstate customers with a booklet, which provides valuable information explaining the rights and the responsibilities of both company and the consumer during a move across state lines. Additionally, moving companies that ship more than 100 shipments per year for individual shippers are required to give a prospective shipper a copy of its annual household goods performance report.

The Commission instituted a rule-making proceeding¹ proposing that performance report requirements be modified to include more objective disclosure of the carrier's performance and enhanced verification of the accuracy of the report by the inclusion of a sworn statement of an officer of the carrier. Carriers would be required to retain and make available for Commission inspection for at least two years following the

date of filing, all working papers and files relating to the preparation of the report.

The Commission is concerned with ensuring that damage claims be handled promptly and correctly and obtained injunctions against several moving companies that transported shipments without having insurance on file with the Commission.²

The Commission receives service complaints against companies that transport private automobiles and recreational vehicles for individual consumers. Often consumers are frustrated because of their inability to obtain information concerning the status of delivery. This is particularly prevalent when dealing with property brokers where the customer does not know what carrier will ultimately transport the vehicle.³ The Commission acts quickly to determine the location of the vehicle and to ensure that it is timely delivered. Repeated failure to deliver a vehicle could result in a show cause proceeding to determine if the carrier's operating authority should be revoked. In cases where carriers are operating without authority, the Com-

² *Interstate Commerce Commission v. A. Aachen Corp., dba The Right Move*, No. 93-6482 (S.D. Fla. June 10, 1993); *Interstate Commerce Commission v. Gary Curtis, dba East Coast Connection*, Civil No. 93-3356-RG (C.D. Cal. June 30, 1993); *Interstate Commerce Commission v. A.F.M.S., Inc., dba Advanced Freight Management Systems*, 4-93-CV-263-Y (N.D. Tex. May 27, 1993); *Interstate Commerce Commission v. Anthony Cunningham, dba Coast to Coast Moving and Auto Transport*, CV-S-92-773-HDM (D. Nev. March 27, 1993); *Interstate Commerce Commission v. Delapp & Gourley Investments, Inc., dba Advanced Moving Systems*, Civil No. 93-0519-JMI (C.D. Cal. February 3, 1993); *Interstate Commerce Commission v. A Oddys, Inc.*, No. CV-92-4474 (S.D. N.Y. December 7, 1992); and *Interstate Commerce Commission v. Jose De Jesus-Alfaro Flores, dba Mudanzas Tapatas*, Civil No. 92-7636-WDK (C.D. Cal. July 23, 1993).

³ *Interstate Commerce Commission v. A. Aaron's Auto Shippers and Mitchell J. Winik*, Civil No. 92-3262-IH (C.D. Cal. January 12, 1993).

¹ Ex Parte No. MC-19 (Sub-No. 42), *Practices of Motor Common Carriers of Household Goods (Performance Reports)* (not printed), served January 28, 1993.

mission seeks court injunctions to halt those operations.⁴

Insurance

The Commission continued its efforts to protect the public by enforcing ICC insurance filing requirements. These regulations require all interstate motor common and contract carriers, property brokers, and freight forwarders to file and maintain with the Commission certificates of insurance or other evidence of security at the prescribed minimum limits of liability.⁵ The operating rights of these entities remain in effect only as long as these insurance requirements are met. Insurance companies are required to notify the Commission of all policy cancellations. Receipt of such notification triggers a process that leads to the revocation of a carrier's operating authority if the carrier does not secure insurance. During Fiscal Year 1993, the Commission received 58,170 insurance filings, as well as approximately 38,300 notices of cancellation. The operating rights of 7,446 carriers or brokers were revoked for failure to have insurance or other security on file.

The Commission continued to review and grant applications filed by motor carriers and freight forwarders for authority to self-insure their bodily injury and property damage and/or cargo insurance. To ensure that self-insured carriers continue to provide adequate protection to the public, the Commission reviews the claims handling and financial statements of these carriers on a periodic basis.

The Commission conducts investigations to identify uninsured operations

and often uses consent agreements to resolve the problem. Under the terms of the consent agreement, the Commission agrees to forego seeking a formal court action if the carrier agrees not to operate in interstate commerce without the required insurance coverage. In Fiscal Year 1993 the Commission obtained 1,817 consent agreements in insurance cases.

In situations where the Commission is not convinced that a carrier will abide by the terms of a consent agreement or a carrier violates the terms of a consent agreement, stronger enforcement action is taken. The Commission seeks court action to obtain either a temporary restraining order, a preliminary injunction, or a permanent injunction prohibiting the carrier from operating until insurance is filed with the ICC. During the fiscal year, 50 injunctions were obtained against carriers restraining them from operating without insurance. The Commission conducts follow up investigations to ensure that carriers comply with consent agreements and injunctions.

Fraud and Unethical Conduct

The Commission continues to commit substantial resources to combat fraud in the trucking industry. In one case, a former owner and president of an interstate trucking company plead guilty to one count of racketeering, 12 counts of making false documents and presenting them to a federal agency, and one count of criminal forfeiture.⁶

The racketeering charge was the result of defendant's fraudulent scheme to file counterfeit tariffs, whereby he replaced expired tariff supplements in Commission files with counterfeit supplements to make it appear that expired

⁴ See *Interstate Commerce Commission v. AAA Universal International Auto Transport and Mark Dann*, Civil No. 92-4412-HLH (C.D. Cal. December 15, 1992) and *Interstate Commerce Commission v. Anywhere Auto Transporters, Inc., and Wallace H. Corey*, Civil No. 92-1368-GT (S.D. Cal. February 3, 1993).

⁵ 49 U.S.C. 10927

⁶ *United States v. L. Robert Tannenbaum*, Criminal No. 92-652-01 (E.D. Pa. September 28, 1993). See also *United States v. Arnold Montagano*, Criminal No. 92-652-02 (E.D. Pa. July 30, 1993).

rates were still current. He was charged with duplicating an official ICC seal/date stamp, which he used to imprint the official ICC indicium and date on counterfeit tariff filings so that the filings appeared to be properly filed. He then fraudulently backbilled thousands of shippers over \$17 million on the basis of counterfeit tariff supplements and filed hundreds of lawsuits against the shippers in an attempt to collect the backbillings.

In his duplicate-payment scheme, defendant rebilled shippers who had already paid for transportation, or had already paid twice. He then kept more than an estimated \$870,000 in overpayments from customers instead of returning them, as required by ICC regulations. After he paid the \$2 million forfeiture, the defendant was sentenced to 15 months imprisonment, a \$10,000 fine, and three years probation.

A jury in Los Angeles, California, returned guilty verdicts against four individuals operating as West Coast Truckers Association (WCTA) in a case involving massive insurance fraud.⁷ The defendants used WCTA, a company with ICC operating authority, for the sole purpose of selling nonexistent liability and cargo insurance to other truckers under a bogus lease agreement, which resulted in the collection of a monthly fee for each piece of equipment operated by the trucker. These trucks were not covered by WCTA's insurance policy, because the involved truckers operated independently of WCTA, leaving the public unprotected.

In a case in which some 190 motor carriers were defrauded out of approximately \$1.5 million in transportation charges, seven individuals pleaded guilty to mail fraud, trucking fraud, check kiting and tax fraud. The defendants created a series of brokerage op-

erations billing the shippers directly and never paying the carrier for the transportation charges. The carriers did business with the brokers without knowing they were all owned by the same individuals. Several defendants pled guilty to giving false statements to the ICC regarding the ownership of the brokers. The check kiting scheme caused approximately \$100 million to be funneled through some 28 bank accounts, ultimately resulting in a loss to one bank of approximately \$830,000. The tax fraud involved diversion of company proceeds to the defendants' personal benefit without reporting those amounts on their individual tax returns.⁸

Two individuals pleaded guilty, in another case involving fraud, to conspiring to defraud the United States Government and various trucking companies, by falsely misrepresenting that the transportation brokerage firms they owned were trucking companies fully authorized to conduct interstate transportation operations.⁹ Once the transportation had been completed, the defendants, who operated as property brokers, submitted to the Department of Defense for payment various vouchers and other documents containing the false representation that their companies actually transported the property. The defendants collected hundreds of thousands of dollars from the federal government in this manner and they converted the funds to their own use instead of paying the trucking companies that actually hauled the property.

Decisions were entered in two proceedings involving the failure of lawyers and practitioners to abide by the Commission's Canons of Ethics. The Commission ordered the disbarment of one

⁷ *United States v. John E. Jeserski, Frederick M. Jeserski, et al.* Criminal case No. 93-30026-F (D. Mass. 1993).

⁸ *United States v. Brian Datson and Stephen Mitchell*, Criminal No. 92-45-P-C (D. Maine 1993).

⁹ *United States v. William Akin, et al.*, No. CR 92-484-ER (C.D. Cal. August 23, 1993).

attorney practitioner for obtaining the issuance of operating authority for Mexican nationals contrary to the Congressionally imposed moratorium and for continuing to practice during the period of his suspension.¹⁰ The enforcement action ended an illegal Mexican application "mill" designed to allow Mexican carriers to conduct prohibited operations in the interior of the United States.

A second attorney was disbarred from practice, made the subject of a cease and desist order, and denied his application for broker authority on fitness grounds, when the Commission found that the attorney obtained the improper issuance of authority for Mexican nationals and engaged in practice before the Commission during the period of his suspension.¹¹

Tariff Compliance

A priority in the tariff compliance area this fiscal year were efforts to curtail the avalanche of undercharge claims filed by bankruptcy trustees. For example, an injunction was obtained preventing the collection of undercharge claims against a carrier, its bankruptcy trustee, and its collection agent.¹² The carrier and its representatives claimed that the tariff rates collected were invalid because the published rates contained customer account codes rather than shippers' names thus violating the publication requirements of the Interstate Commerce Act. They sought to impose the higher published class rates. The U.S. District Court for the Northern District of Illinois (Eastern Division) agreed with the rea-

soning and holdings of the 9th Circuit Court of Appeals decision in *I.C.C. v. Transcon*. That decision held that carriers lacked standing to challenge the lawfulness of their own rates.

The injunction required the carrier and its representatives to provide an accounting of all money collected and to make restitution to shippers who had made payments based on the improper undercharge claims.

Other enforcement actions include carriers transporting shipments or passengers without having a tariff on file at the ICC¹³ and for assessing charges based on a filed tariff that did not comply with Commission regulations.¹⁴

Unauthorized Transportation by Mexican-Owned or Controlled Motor Carriers

A statutory moratorium currently bars the Commission from granting operating authority to Mexican carriers.¹⁵ Carriers domiciled in Mexico or owned or controlled by Mexicans cannot operate beyond the United States border zones contiguous with Mexico. Special Certificates of Registration must be obtained to provide this transportation. ICC enforcement efforts in this area concentrate on preventing unlawful operations beyond the border zones as well as insuring that carriers owned or controlled by Mexican citizens do not obtain authority to operate to interior

¹⁰ Hanifen Co., Inc. of Des Moines, Iowa, entered an Agreement of Settlement with the Commission on November 17, 1992, and James Transit of Iron River, Missouri, entered an Agreement of Settlement with the Commission on July 13, 1993.

¹¹ *Interstate Commerce Commission v. Jack Key Auto Sales, Inc.*, Civ. No. 3-93cv0106-H (N.D. Tex. June 1, 1993).

¹² 49 U.S.C. 10922(f). See, *Memorandum for the Secretary of Transportation and the United States Trade Representative*, dated September 25, 1992 (57 Fed. Reg. 44647), which extends Moratorium through September 19, 1994, unless sooner revoked or modified.

¹⁰ Ex Parte No. 487, *In the matter of Mark S. Gray and No. MC-C-30195, Motor Carrier Consultants, Inc.* (not printed), served March 22, 1993.

¹¹ Ex Parte No. 481, *In the matter of Doyle G. Owens and No. MC-258593, Doyle Owens-Broker Application* (not printed), served May 17, 1993.

¹² *Interstate Commerce Commission v. Lifschultz Fast Freight Corp.*, No. 91-C-7556 (N.D. Ill. February 9, 1993).

points in the United States. These are important functions designed to place Mexican and U.S. motor carriers on an equal playing field. The Commission denied one application and revoked 13 grants of operating authority based upon the misrepresentation that the applicants were owned or controlled by American citizens.

The Commission obtained six injunctions against Mexican carriers to halt unauthorized transportation of property into the interior of the United States. The Commission also obtained 22 injunctions against unauthorized, and uninsured passenger transportation by Mexican carriers between points in Mexico and Texas.

TARIFFS AND RAIL CONTRACTS

Highlights of the Year

- Commission received over 1.3 million freight tariffs during the year.
- Commission instituted examination of current tariff requirements to determine if any should be modified or whether new requirements are necessary or appropriate.
- Commission announced its intention to increase tariff monitoring and enforcement efforts.
- Commission concluded that range tariffs, standing alone, are unlawful.
- Commission reaffirmed that shipper account codes are not *per se* unlawful.
- Commission instituted rulemaking to determine whether off-bill discounting does or may result in a misrepresentation of shipping charges.
- Commission requested public comments on proposal regarding development of a comprehensive electronic tariff filing system.
- Commission settled 8,208 informal cases concerning disputes over rate and tariff matters.
- Commission processed 1,397 special docket cases authorizing reparations or waivers of acknowledged unreasonable charges in the amount of \$23 million.

TARIFFS AND RAIL CONTRACTS

In response to Congressional concern that motor carrier tariff filing standards be adequately enforced, the Commission began an examination of current tariff requirements to determine whether any should be modified and whether any new requirements are necessary or appropriate. The Commission requested public comment on a series of specific proposed tariff requirements.¹ In a separate notice, the Commission announced that it intends to increase monitoring and enforcement efforts by screening new tariff filings and by examining existing tariffs to detect those that fail to comply with regulatory standards and requirements. Those not in compliance will not be accepted for filing.² The Commission proposed to focus on the most egregious deficiencies, including (1) failure to participate in governing tariffs, (2) pricing based on ineffective or obsolete rate levels, and (3) unlawful tariff rules, regulations, and/or practices.

The Commission concluded that "range" tariffs are unlawful, standing alone. These are tariffs that do not apply a specific rate but permit the application of any rate within a specific range. The agency held that range tariffs do not meet fully the law's disclosure requirements.³ The Commission

proposal contemplates a two-stage process by which a carrier first files an "initiating" tariff announcing the range of rates potentially available for future transportation service and later files an "activating" tariff prior to movement for an individual shipment or a series of shipments. The initiating tariff would provide the framework for ratemaking and rate filing. The initiating tariff would be filed with the ICC either by mail or by hand-delivery. The activating or supplemental tariff, which would establish the actual rate from among the range of rates applicable to particular shipments, could be filed by mail, hand delivery or by facsimile transmission.

In another significant proceeding, the Commission reaffirmed that shipper account codes are not *per se* unlawful, because coded tariffs may contain sufficient information to meet statutory disclosure requirements.⁴ The agency proposed a new regulation that defines more explicitly the information that an undisclosed customer account code tariff must contain. It provides that carriers may either file (in tariff form) a separate alphabetized list of the shipper names corresponding to the assigned codes (cross-referenced) or amend existing code tariffs to include the name of the shipper to whom each code is assigned or the involved commodities and locations.

The Commission instituted a rule making proceeding to determine whether off-bill discounting where it does or may

¹ Ex Parte No. MC-212, *Review of Motor Tariff Regulations*—1993 (not printed), served March 11, 1993. The tariff requirements included in the proposal were tariff and rule numbering, periodic reissuance of tariffs, publication of surcharges, tariff check sheets, tariff supplements, non-alternating rates, and similar provisions.

² Ex Parte No. 212A, *Monitoring of Motor Tariff Filings*, 58 Fed. Reg. 14,223 (1993), and ICC Register March 16, 1993, at page 25.

³ No. 40887, *Range Tariffs of All Motor Common Carriers—Show Cause Proceeding* (not printed), served August 4, 1993, initial show cause proceeding instituted by decision (not printed), served January 5, 1993; considered in conjunction with two proceedings instituted at the close of the prior fiscal year: No. 40843, *Tariffs of Certain Motor Common Carriers Containing "Ranges of Rates"*—

Show Cause Proceeding instituted by decision (not printed), served August 20, 1992, and No. 40848, *Tariffs of Certain Motor Common Carriers Containing Ranges of Discounts—Show Cause Proceeding* instituted by decision (not printed), served September 8, 1992. The decision also embraces Ex Parte No. MC-213, *Range Tariffs—Fax Filing*.

⁴ No. 40888, *Reconsideration of Special Authorities Authorizing the Publication of Customer Account Codes in Tariffs* (not printed), served September 1, 1993. The proceeding was instituted by decision (not printed) served January 5, 1993.

result in a misrepresentation of shipping charges should be found to be an unreasonable practice or otherwise unlawful.⁵ Off-bill discounting is the practice by which a party that arranges for transportation, but is not the party paying for the transportation, receives a rebate of a portion of the carrier's freight charges. The Commission also proposed to reimpose the requirement that common carriers file indexes to their tariffs.⁶

The Commission reopened a rulemaking and asked for public comments regarding the development of a comprehensive electronic tariff filing system that would support automated functions such as electronic data interchange and rate analysis.⁷ The Commission also invited comments concerning the substitution of general tariff standards for many of the detailed publishing regulations previously established for printed tariffs.

The Commission entered into an agreement with the Department of Transportation's John A. Volpe National Transportation Systems Center to develop and implement an electronic tariff document management system. This system will allow the Commission to retain electronic images of the filed tariffs, rather than the actual printed documents, and will greatly improve the security of the official tariff library, reduce the space required to house it, and offer improved public access to tariff information.

In a unique case involving the application of ICC tariff rules, the Commission affirmed the rejection of a tariff filed nearly five years after the carrier's

name change. The Commission held that the publication, intended to support undercharge claims of a defunct carrier, did not comply with the Commission's standards⁸ for timely filing.⁹

Tariff Filings

The 1.3 million common carrier freight tariff filings of Fiscal Year 1993 reflect a slight decrease from the nearly 1.4 million tariff filings received in the prior year. For several years freight tariff filings have been relatively stable, indicating that intense competition continues throughout the transportation industry.

Motor carrier freight tariff filings remained fairly constant at slightly over one million, while rail freight tariff filings decreased from 116,000 to 105,000. International ocean/land intermodal freight tariff filings decreased from 57,000 to 27,000, and water carrier freight tariff filings increased from over 56,000 to 77,000. Motor passenger tariff filings increased to 4,500 from the previous year's filings of 3,500. No rail or water passenger tariff filings were received in Fiscal Year 1993.

The 40,000 rail contract summary filings of Fiscal Year 1993 reflect a modest increase over the 38,000 filings of 1992, and indicate that contract pricing continues to be an attractive alternative to tariff pricing. The number of rail contracts filed in Fiscal Year 1993 declined to 2,900 from the 38,000 filed in 1992, reflecting the Commission's action to exempt rail carriers from the requirement to file rail contracts for other than agricultural commodities.

Informal Rate Cases

The Commission's Office of Tariffs used its informal procedures to settle 6,266 cases concerning disputes over rate and tariff matters during the fiscal

⁵ Ex Parte No. MC-180 (Sub-No. 2), *Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges* (not printed), served June 4, 1993.

⁶ No. MC-211, *Revision of Tariff Regulations—Indexes* (not printed), served August 5, 1993, as corrected by notice (not printed) served August 5, 1993. The proceeding was initiated by decision (not printed) served January 5, 1993.

⁷ Ex Parte No. 444, *Electronic Filing of Tariffs* (not printed), served April 16, 1993.

⁸ 49 CFR 1312.20(h).

⁹ *Appeal of Reject.—Adopt. Pub.—BGR Transp. Co., Inc.*, 9 I.C.2d 771 (1993).

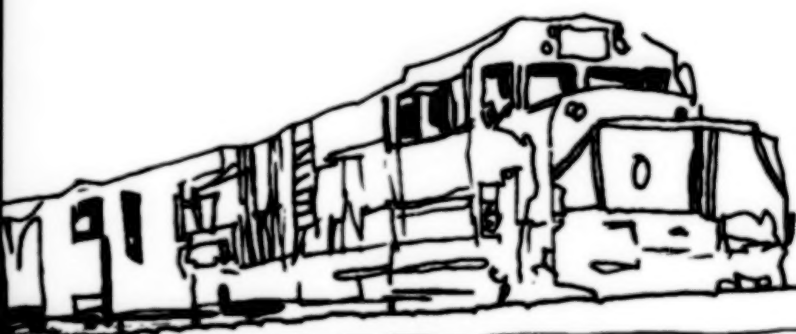
year. This informal and inexpensive process permits the settlement of many tariff disputes without the need to institute time-consuming and costly formal procedures. Several hundred of the disputes involved freight bill claims by auditors and collection agencies for alleged underpayment of freight bills of bankrupt motor carriers and freight forwarders. The Office of Tariffs was successful in showing that most of the claims were not properly supported and, consequently, many improper claims against shippers and receivers of freight were withdrawn.

Any party, from a large corporation to an individual consumer, has the op-

portunity to utilize the informal rate settlement process and to receive the same expert assistance that is provided by staff to the Commission in formal rate and tariff matters. The informal settlement process allows the dissemination of pertinent law, tariff information, and the rights of parties in order to prevent the future occurrence of similar disputes.

The Commission's special docket procedure permits rail and water carriers to seek authority to refund or waive the collection of admittedly unreasonable charges. During the year, 1,397 special docket cases were processed authorizing reparations and waivers amounting to over \$23,000,000.

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COURT ACTIONS

Highlights of the Year

- Commission involved in over 330 cases pending before the Supreme Court and lower federal courts.
- In the motor carrier area, the Supreme Court ruled that a lower court normally should not proceed to judgment on an undercharge complaint without an ICC ruling on the reasonableness of the filed rate. The Court directed the Ninth Circuit Court of Appeals to reconsider the ruling that barred the Commission from obtaining an injunction against a trustee's rebilling for a loss-of-discount provision despite carrier's failure to comply with credit regulations.
- In a ruling that affects 18,000 undercharge suits, representing close to \$1 billion in claims, a district court held a motor carrier trustee to its filed shipper-coded discount rates.
- The Ninth Circuit upheld the Commission's ability to authorize the transfer of intrastate authority as part of the transfer of interstate authority from one carrier to another.
- The Third Circuit affirmed the Commission's dismissal of a complaint charging that a carrier had impermissibly offered common carrier service under contract to large shippers.
- The District of Columbia Circuit upheld, in part, the Commission's resolution of a rail-labor dispute.

COURT ACTIONS

The Office of the General Counsel represents the Commission in the United States Supreme Court and in the lower Federal courts. At the beginning of the fiscal year, over 280 cases were pending before the courts and 50 cases were filed during the year. The courts decided 130 cases, leaving approximately 200 cases pending at the close of the fiscal year.¹ Of the decided cases, the Supreme Court issued a written opinion in one, granted a petition for *certiorari* and summarily vacated and ordered reconsideration at the request of the Commission in another case, and denied two petitions for *certiorari* opposed by the Commission. The various courts of appeals decided just over 100 cases involving the Commission, and federal district or bankruptcy courts decided the remainder.

The Commission continued to expend significant resources handling motor carrier undercharge cases. The Office of General Counsel also obtained court decisions on a number of other significant motor and railroad issues.

Motor Cases

As reported last year, an undercharge crisis developed following the Supreme Court's 1990 decision in *Maislin*,² as representatives of bankrupt carriers (as well as non-operating carriers) greatly expanded their efforts to collect so-called undercharges. That decision reaffirmed the primacy of the filed rate doctrine, requiring interstate common carriers to collect only the rates published in tariffs filed with the ICC, regardless of their history of having quoted and accepted as payment in full, lower rates that the carrier failed to file.

In 1993, however, the Supreme Court ruled that, because the filed rate doctrine does not require the collection of rates found by the Commission to be unreasonable, a court considering an undercharge suit normally should not proceed to judgment on the carrier's or trustee's complaint without awaiting an ICC ruling on the reasonableness of the rate.³ The Court explained that where a carrier is in bankruptcy, proceeding to judgment prior to the ICC reasonableness determination would normally be inappropriate because the carrier may be unable to satisfy subsequent shippers' reparations claims based on an ICC finding of unreasonableness.

In another case, the Supreme Court directed the Ninth Circuit to reconsider its ruling that the filed rate doctrine bars the ICC from obtaining an injunction against a trustee's rebilling based on a loss-of-discount provision despite the carrier's failure to comply with the Commission's credit regulations.⁴ In requesting that remand, the Commission relied on the Supreme Court's clarification in *Reiter* that the filed rate doctrine, while precluding common law claims and defenses, does not preclude avoidance of the tariff rate through claims and defenses that are specifically accorded by the Interstate Commerce Act itself. In that same litigation, the Supreme Court denied the trustee's cross-petition for a writ of *certiorari* as to that portion of the Ninth Circuit's decision, which held that the trustee lacks standing to challenge the validity of the bankrupt carrier's shipper-coded tariffs.⁵

Similarly, the district court overseeing another major carrier's bank-

¹ Pending cases include decided cases in which the court has not issued a final mandate pending expiration of the time for a further appeal.

² *Maislin Indus., U.S. v. Primary Steel, Inc.*, 497 U.S. 116 (1990), *rev'g Maislin Indus., Inc. v. Primary Steel, Inc.*, 879 F.2d 400 (8th Cir. 1989).

³ *Reiter v. Cooper*, 507 U.S. ___, 113 S.Ct. 1213 (1993).

⁴ *ICC v. Transcon Lines*, ___, U.S. ___, 113 S.Ct. 2955 (1993) (*mem.*), *remanding* 990 F.2d 1503 (9th Cir. 1993).

⁵ *Gumpert v. ICC*, 113 U.S. 2987 (1993).

ruptcy litigation held that the trustee must adhere to the carrier's filed shipper-coded discount rates and cannot challenge the legality of those rates through undercharge suits.⁶ The latter ruling affects roughly 18,000 similar suits, representing roughly \$1 billion in asserted undercharge claims.

In a companion decision, the district court reversed and vacated a portion of an injunction issued by the bankruptcy court that had barred the Commission from conducting any proceedings that would require the participation of the trustee, his collection agency, or the estate's principal creditor.⁷ The court held that the trustee is not generally immune from Commission proceedings conducted in furtherance of its regulatory authority.

However, the court left intact the injunction against the specific Commission show-cause proceeding as to the bankrupt carrier that had prompted the broader injunction.⁸ In doing so, the district court relied upon a Third Circuit ruling, which struck down the Commission's attempt to establish a mechanism for screening undercharge claims asserted by all carriers that are no longer operating.⁹ The screening procedure had been designed to bring regulatory discipline to the rebilling activities of carriers that are no longer subject to market disciplines and to protect the shipping public by culling out claims that lack even a colorable basis under the Interstate Commerce Act. The court set aside the screening procedure as beyond the Commission's statutory authority.

In other undercharge-related litigation, a split has developed among the circuits as to the effect that should be given ICC rules that require a carrier to participate in the tariffs upon which it relies and that specify that a tariff rate is incomplete and void if the carrier fails to participate in a referenced tariff (such as a mileage guide tariff or commodity classification). The Commission held that the filed rate doctrine does not permit collection of void rates, and carriers should not be able to base undercharge claims on such rates.¹⁰ The District of Columbia Circuit, however, found the effect of this rule to be retroactive in nature and beyond the Commission's statutory authority.¹¹ Some circuits have followed that ruling,¹² others have held to the contrary,¹³ and the Commission will seek Supreme Court resolution of the issue.

A new dimension to the undercharge crisis is reflected in the current attempts of some carrier interests (usually bankruptcy trustees) to disavow a carrier's past contracts on grounds that the transportation provided was actually common carriage, rather than contract carriage. The proponents are now seeking to retroactively collect much higher filed common carrier rates in place of the contract rates previously agreed to and collected. Recognizing the ICC's primary jurisdiction over such issues, most bankruptcy courts are referring the issue to the Commission to determine whether

⁶ *Whitaker v. Frito-Lay, Inc.*, No. 92-825-Civ-J-16 (M.D. Fla. Sept. 13, 1993) (*In re P/T/E Undercharge Litigation*, No. 93-1-MV-J-16).

⁷ *Whitaker v. ICC*, Nos. 92-603-Civ-J-16 and 92-492-Civ-J-16 (M.D. Fla. Sept. 10, 1993).

⁸ *Id.*

⁹ *White v. United States*, 989 F.2d 643 (3rd Cir. 1993), overturning *Non-Operating Motor Carriers—Collection of Undercharges*, 8 I.C.C.2d 742 and 9 I.C.C.2d 35 (1992).

¹⁰ *Jasper Wyman & Son—Pet. for Declar. Order*, 8 I.C.C.2d 246 (1992).

¹¹ *Overland Express, Inc. v. ICC*, 996 F.2d 356 (D.C. Cir. 1993), *reh'g denied* (Sept. 22, 1993).

¹² *Security Services, Inc. v. P-Y Transp., Inc.*, 3 F.3d 966 (6th Cir. 1993); *Brizendine v. Cotter & Co.*, 4 F.3d 457 (7th Cir. 1993).

¹³ *Security Services, Inc. v. K Mart Corp.*, 996 F.2d 1516 (3d Cir. 1993); *Freightcor Services, Inc. v. Vitro Packaging, Inc.*, 969 F.2d 1563 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 979 (1993); *Atlantis Express, Inc. v. Associated Wholesale Grocers, Inc.*, 989 F.2d 281 (8th Cir. 1993); *F.P. Corp. v. Twin Modal, Inc.*, 989 F.2d 285 (8th Cir. 1993).

the transportation provided was contract or common carriage.¹⁴ In the first challenge to a Commission decision in this area, a Minnesota district court upheld the Commission's finding that the transportation at issue was valid contract carriage.¹⁵ An appeal to the Eighth Circuit is pending.

Finally, at year's end a challenge was pending in the District of Columbia Circuit to the Commission's determination of the approach it will apply in deciding rate reasonableness in undercharge proceedings.¹⁶

In other motor carrier litigation, the Ninth Circuit upheld the Commission's ability to authorize the transfer of intrastate authority as part of the transfer of interstate authority from one carrier to another.¹⁷

In a significant case involving contract carriage, the Third Circuit affirmed the ICC's dismissal of a complaint charging that a carrier had impermissibly offered common carrier service under contract to large shippers.¹⁸ The ICC's decision made clear that the services provided under contract carriage can be substantially identical to those offered common carrier customers so long as they are designed to meet the distinct needs of the shipper to whom they are offered.

In a bus licensing case, the Second Circuit ruled that the Commission is not required to perform an environmental analysis of individual applications to provide bus service into Manhattan.¹⁹ The court agreed with the Commission that the City of New York can mitigate adverse environmental effects of new carriers under its police powers by requiring vehicles to have anti-pollution devices.

Rail Cases

The Commission's resolution of a major rail labor dispute was, in large measure, upheld by the District of Columbia Circuit.²⁰ In a case involving leases of the rail lines of several individual carriers, which amounted to a consolidation of their individual operations, the court agreed that the Commission may allow modification of collective bargaining agreements when necessary to achieve a transportation benefit resulting from the approved transaction; that labor protective conditions need not extend beyond six years plus 75 days; and that employees' participation in a safety strike did not cause them to forfeit their eligibility for labor protection. However, the court remanded the case for the Commission to determine (1) what transportation benefits were expected from the leases themselves that could only be achieved by modifying the collective bargaining agreements, and (2) whether any of the modifications recommended by the arbitrator and permitted to take effect by the Commission affected "rights, privileges, and benefits" in those agreements that cannot be changed under 49 U.S.C. 11347 even to implement the approved transaction.

¹⁴ E.g., *Gumport v. American Standard, Inc.*, Adv. No. AD-92-02760; *In Re Transcon Lines*, No. LA-90-10680-RR (Bankr. C.D. Cal., Jan. 21, 1993).

¹⁵ *General Mills, Inc.—Pet. for Decl. Order*, 8 I.C.C.2d 313 (1992), *aff'd sub nom. United Shipping Co. v. General Mills*, Adversary No. 4-89-345 (Bankr. D. Minn. Aug. 27, 1992), *aff'd* No. 3-92-0668 (D. Minn. Dec. 24, 1992), *appeal pending*, No. 93-1232 MNST (8th Cir.).

¹⁶ No. 40265, *Georgia-Pacific Corp.—Pet. for Declaratory Order*, 9 I.C.C.2d 103 (Oct. 30, 1992), *clarified*, 9 I.C.C.2d 796 (Aug. 3, 1993), *pet. for review pending sub nom. Oneida Motor Freight, Inc. v. ICC*, No. 93-1026 (D.C. Cir. filed Jan. 12, 1993).

¹⁷ *Oregon Public Utility Comm'n v. ICC*, 979 F.2d 778 (9th Cir. 1992).

¹⁸ *Zoneskip, Inc. v. United States*, No. 92-3521 (3d Cir. June 18, 1993), *aff'g Zoneskip, Inc. v. UPS, Inc. and UPS of America, Inc.*, 8 I.C.C.2d 645 (1992).

¹⁹ *City of New York v. ICC*, ___ F.2d ___, Nos. 92-4239 and 93-4015 (2d Cir. Sept. 10, 1993).

²⁰ *Railway Labor Executives Ass'n v. ICC*, 987 F.2d 806 (D.C. Cir. 1993).

In a follow-up to the Union Pacific-Missouri Pacific merger, the District of Columbia Circuit affirmed the Commission's methodology for determining the compensation required to be paid by a tenant under a trackage rights arrangement imposed by the Commission as a condition to approval of that merger.²¹

In another rail case, the Eighth Circuit agreed that when considering whether to revoke an exemption for sale of a line from one carrier to another, the agency need only consider those elements of the national transportation policy relating to the underlying statutory provision from which the exemption was sought.²²

The Eighth Circuit remanded a case in which the Commission had approved a carrier's innovative grain car allocation program, for consideration of the impact of the program on the carrier's ability to fulfill its common carrier obligation to shippers who do not participate in the program.²³

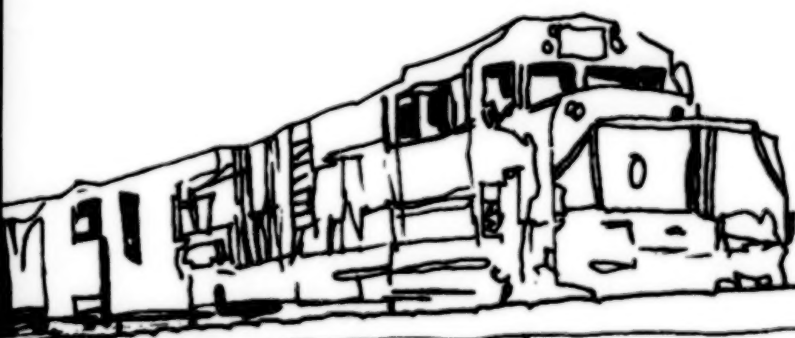
Finally, in a rail grain rate case, the District of Columbia Circuit rejected the use of a revenue-to-variable cost comparison test for determining the reasonableness of the rates at issue and remanded the case for reexamination of the appropriate methodology for evaluating rate reasonableness.²⁴

²¹ *Union Pacific R.R. v. ICC*, Nos. 88-1186, *et al.* (D.C. Cir. Nov. 1992), cert. denied, ___ U.S. ___ (1993).

²² *Winter v. ICC*, 992 F.2d 824 (8th Cir. 1993).

²³ *National Grain and Feed Ass'n v. ICC*, ___ F.2d ___, Nos. 92-2398 and 92-2455 (8th Cir. Sept. 16, 1993).

²⁴ *Burlington N. R.R. v. ICC*, 985 F.2d 589 (D.C. Cir. 1993).



LEGISLATION

Highlights of the Year

- Congressional interest in surface transportation issues was largely directed toward resolution of the motor carrier industry undercharge crisis and remedial undercharge legislation was introduced in the U.S. Senate and House of Representatives.
- A majority of the Interstate Commerce Commission opposed an amendment to zero-fund the agency, defeated in the House during debate on the Department of Transportation and Related Agencies Appropriation bill for Fiscal Year 1994.
- The Commission testified at oversight hearings concerning intercity bus service, preservation of railroad right-of-way for interim trail use and rail banking, and the effect of the 1993 Midwestern Summer flood on surface transportation.

LEGISLATION

Remedial Undercharge Bills

In the House of Representatives, three bills were introduced to remedy the undercharge crisis: Congressman Bud Shuster (R-PA) introduced H.R. 1710, the Negotiated Rate Amendments Act of 1993; Congressman William O. Lipinski (D-IL) introduced H.R. 2021, the Undercharge Settlement and Amnesty Act of 1993; and Congressman Norman Y. Mineta (D-CA) introduced H.R. 2121, the Negotiated Rates Act of 1993. By the end of the fiscal year, none of these bills had been reported out of Committee.

Senator J. James Exon's (D-NE) S. 412, the Undercharge Equity Act of 1993, was reported by the Senate Committee on Commerce, Science, and Transportation on June 29, 1993 (S. Rpt. 103-79) and passed the Senate by unanimous consent on July 1, 1993.

On June 15, 1993, the Commission testified before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation on undercharge issues and the proposed legislative solutions. The Commission commented on H.R. 2121, H.R. 1710, H.R. 2021, and S. 412.

With the exception of H.R. 1710, all the remedial bills contain provisions for settling undercharge claims involving unfilled, negotiated rates. H.R. 2121 goes one step further to apply the settlement provisions to any undercharge claim. The bills include differing percentages for settling claims involving truckload or less-than-truckload shipments. Full or partial exemptions from undercharge claims for small businesses, charitable organizations, public warehousemen and shipments of recyclable materials are included in one or more of the bills. H.R. 2021 provides for an exclusion from undercharge liability for small businesses and charitable entities. In its testimony, the Commission endorsed this exemption because small businesses and charitable entities have

been hit hardest by the cost of litigation, which often is more than the amount in controversy.

Shippers who do not settle are authorized by H.R. 2121 to bring their tariff applicability and rate reasonableness defenses to the Commission before paying any additional compensation to the carrier. The Commission believes this is the best approach to handling claims for higher freight charges from carriers who have already received payment for their services. The Commission testified that it opposes provisions that require the shipper to post a bond or establish an interest-bearing escrow account before seeking the Commission's determination of the applicability and/or reasonableness of the claimed rate. The Commission testified that it does not support the provision of H.R. 2021 that would require a court to award attorney fees to a carrier who recovers any portion of an undercharge claim.

In its testimony, the Commission expressed its support for the provisions of S. 412, which provide a one-year period for the Commission to decide the reasonableness of a challenged rate. The ICC believes that the one-year period best reflects the time it would take to docket a proceeding, allow for discovery, receive the evidence and issue a decision.

H.R. 1710 and H.R. 2121 provide an additional defense to undercharge claims involving negotiated, unfilled rates. These bills would overrule the Supreme Court's *Maislin* decision,¹ by empowering the Commission to make an unreasonableness practice finding under certain circumstances. The Commission testified that it strongly supports this provision.

All three House bills address customer or shipper account codes. The

¹ 497 U.S. 116 (1990), rev'g *Maislin Indus., Inc. v. Primary Steel, Inc.*, 879 F.2d 400 (8th Cir. 1989).

controversy surrounding shipper account codes highlights the fact that many undercharge claims are based on contentions that the applicable rate was illegal. At an open voting conference on May 25, 1993, a majority of the Commission voted to permit continued use of undisclosed customer codes only where the tariff otherwise adequately discloses the traffic to which the rate will be applied. The Commission chose not to require all such tariffs to name the shipper because it believes that, if there is enough information about the traffic, the tariff can serve its function of adequately disclosing the rate to a competitor shipper or carrier. In its testimony, the Commission urged the allowance or the use of shipper codes under the approach decided at its May 25, 1993, voting conference rather than adopting a provision that would phase out shipper codes.²

Each of the bills addresses the subject of contract carriage. They recognize the Commission's jurisdiction to determine whether particular transportation meets the statutory standards for contract carriage. In its testimony, the Commission strongly endorsed H.R. 2121's explicit codification of its jurisdiction in this area.

H.R. 2121 and H.R. 2021 would amend the Interstate Commerce Act to specify the minimum requirements for a contract carriage agreement. Effective June 20, 1992, the Commission revoked its 1937 regulations, which imposed requirements similar to those now proposed. A majority of the Commission reasoned that spelling out the minimum requirements to establish contract carriage was inconsistent with the pro-competitive policies of the Motor Carrier Act of 1980.

The Commission supported changes to the statute of limitations made by all four bills. The time period for bringing undercharge claims initially would be shortened from three years to two, bringing it into parity with the current overcharge statute of limitations. Later, the time is reduced to 18 months for both undercharge and overcharge claims. In its testimony, the Commission recognized 18 months as a sufficient period of time to bring either type of action. In either case, when the carrier files for bankruptcy the statute of limitations is extended for two years under 11 U.S.C. 108.

All four bills permit carriers and shippers to resolve by mutual agreement, overcharge and undercharge claims that result from billing errors or other inadvertent filing errors, without being subject to the civil and criminal penalties of Chapter 119 of the Interstate Commerce Act. The Commission testified that these provisions will help establish a needed, flexible method for correcting tariff errors that inevitably occur. Similar procedures already exist for rail and water carriers.

H.R. 2121 and H.R. 2021 contain a requirement that the ICC promulgate regulations within 90 days of enactment to prohibit off-bill discounts and provide civil penalties for knowing violations. In its testimony, the Commission urged Congress to await the outcome of its rulemaking proceeding on off-bill discounting,³ before enacting either of these provisions.

H.R. 2121 mandates a study by the Transportation Research Board of the costs and benefits of the current tariff filing system, including the possibilities for electronic tariff filing. H.R. 2021 calls for the ICC to conduct an electronic tar-

² See, Docket No. 40888, *Reconsideration of Special Tariff Authorities Authorizing the Publication of Customer Account Codes in Tariffs* (not printed), served September 1, 1993.

³ Ex Parte No. MC-180 (Sub-No. 2), *Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges* (not printed), served June 4, 1993.

iff filing study. A majority of the Commission stated its preference for the approach of H.R. 2121, which asks important questions about motor carrier tariff filing before moving forward and exploring how to modernize the system. The majority believed that H.R. 2121 should be amended to expressly allow for debate on whether the tariff filing requirement should be retained.⁴

Transportation and Related Agencies Appropriations Bill for Fiscal Year 1994

H.R. 2750, the Department of Transportation and Related Agencies Appropriations Act for the Fiscal Year ending September 30, 1994, was reported by the House Appropriations Committee on July 27, 1993 (H. Rep. No. 103-190), and passed the House on September 23, 1993. The Senate did not act on the bill by the end of the fiscal year.⁵

Besides containing the Commission's funding levels for Fiscal Year 1994, the House report stated that the Committee would reassess the Commission's staffing needs during hearings on the ICC's Fiscal Year 1995 budget, to ensure that adequate resources are available to address the Commission's responsibilities. In addition, the report noted with approval the Commission's issuance of a decision seeking public comment on electronic tariff

filing implementation,⁶ in furtherance of the Committee's directive for Fiscal Year 1993 that the ICC begin aggressive implementation of electronic tariff filing. The Committee directed the Commission to give priority attention to developing its electronic tariff filing plan during Fiscal Year 1994.

On September 23, 1993, an amendment to eliminate ICC funding was offered and defeated during House debate on the Department of Transportation and Related Agencies Appropriation bill for Fiscal Year 1994. In offering the zero-funding amendment Congressman Joel Hefley (R-CO) stated that he did so to force the transfer of Commission functions to the Department of Transportation (DOT). Congressman Hefley questioned the continuing need for Commission functions to be conducted in an independent and open forum, after the regulatory reforms of the 1980's.

Opponents of transferring Commission functions to DOT successfully argued that the independent and open forum provided by the ICC ensures a competitive and efficient interstate transportation system. Our nation's interstate transportation system is critical to the preservation of a competitive marketplace, industry stability, and the public's access to interstate transportation services. Opponents asserted that the Commission's quasi-judicial and regulatory functions as an arm of Congress are best facilitated by the independent status selected by its Congressional founders. The Commission's independent status ensures policy continuity. Transfer opponents asserted that assumption of the Commission's functions by DOT would inevitably result in a loss of efficiency and focus. Additionally, the cost to the surface transportation industry of lost ICC efficiencies and

⁴ On December 3, 1993, after Fiscal Year 1993 had closed, the President signed into law "The Negotiated Rates Act of 1993" (P.L. No. 103-180). H.R. 2121, the Negotiated Rates Act of 1993, passed the House by a 293 to 116 vote on November 15, 1993, (as reported by the Committee on Public Works and Transportation on November 15, 1993, (H.R. Rpt.No. 103-359)). On November 15, 1993, the Senate passed S. 412, by voice vote, after amending it to contain the language of H.R. 2121 as passed the House.

⁵ On October 6, 1992, President Bush signed into law the Department of Transportation and Related Agencies Appropriations Act, 1993 (Public Law No. 102-388).

⁶ Ex Parte No. 444, *Electronic Filing of Tariffs* (not printed), served April 16, 1993.

expertise in case handling would far outweigh the nominal projected savings. Finally, opponents of transferring Commission functions to DOT stressed the Commission's drastic budgetary reductions and reorganizational measures in recent years. The Clinton Administration opposed efforts to transfer Commission functions to DOT.

Oversight Hearings

On March 11, 1993, the Commission testified before the Surface Transportation Subcommittee of the Senate Committee on Science, Commerce, and Transportation. The testimony highlighted competitive issues related to intercity bus service and described a Commission staff study of the intercity bus industry that had just been initiated. The Commission's staff study evaluated the adequacy of intercity regular route bus service and certain carrier practices, in order to develop an overview of the current state of the intercity bus industry. The competitive issues addressed in the Commission's testimony fall into the following broad categories: terminal access, anticompetitive fares, mutual honoring of tickets and other interline service restrictions, and information and ticket sales.

On September 23, 1993, the Commission testified before the House Energy and Commerce Committee's Subcommittee on Transportation and Hazardous Materials regarding the preservation of rights-of-way for interim trail use and rail banking and the effects of the 1993 Midwest summer flood on surface transportation. During the flood, the Commission quickly aided railroad and motor carriers and shippers through the agency's information-gathering activities and the establishment of an interagency and private industry working group. The Commission's monitoring of the flood's impacts continued throughout the post-flood recovery period. Commission findings were

forwarded to Congress and to DOT. The Commission also outlined the ICC's statutory authority to assist interstate carriers in dealing with operational problems created by natural disasters, such as the Midwest flood.

The Commission seeks to preserve the nation's rail transportation infrastructure through the promotion of rails-to-trails conversions. To this end, the ICC has taken an active role in providing notice and guidance to landowners and potential trail users in abandonment exemption proceedings. To promote further conversion of rails-to-trails, the Commission testified that it is interviewing railroads to identify reasons for any resistance to rail banking and trail proponents to identify stumbling blocks to trail conversions. The Commission is gathering examples of successful trail-use agreements to make available as models to interested parties and will publish a new informational brochure to guide members of the public interested in rail-to-trail conversions. To aid dissemination of public information regarding rails-to-trail conversions, the Acting Director of the Office of Public Assistance has been designated as the contact for all inquiries regarding rail banking.

Other Legislative Proposals

During the fiscal year, the Commission monitored a number of other legislative proposals dealing with surface transportation.

In response to the devastating Midwest flood of the summer of 1993, H.R. 2667, later enacted as Public Law 103-75, was introduced to provide emergency supplemental appropriations. P.L. 103-75 provided \$11 million for the restoration of rail lines of other than class I railroads or railroads owned by class I railroads that carried 5 million gross ton miles or less during the prior year, and \$10 million to restore rail lines of any railroad, subject to the discretion of the Secretary of Transportation.

On January 5, 1993, Congressman William L. (Bill) Clay (D-MO) introduced H.R. 5., to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes, which was reported by the House Energy and Commerce Committee on May 27, 1993 (H. Rpt. 103-116) and passed the House on June 15, 1993. On January 21, 1993, Senator Howard M. Metzenbaum (D-OH) introduced S. 55, to achieve the same ends. S. 55 was reported by the Senate Labor and Human Resources Committee on July 27, 1993 (S. Rpt. 103-110). No further action was taken by the Senate during the fiscal year.

On February 23, 1993, Congressman Pete Geren (D-TX) introduced H.R. 1077, the Private Motor Carrier Equity Act, to restrict States from imposing economic regulation on compensated intercorporate transportation, single source leasing, trip leasing (with or without drivers) from private carriers, separate transportation subsidiaries and dedicated contract carriage. H.R. 1077 is similar to H.R. 4334, which was introduced by Congressman Geren but not acted on in the 102nd Congress. By the end of the fiscal year, the House had not acted on H.R. 1077.

H.R. 1758 was introduced on April 21, 1993, to codify without substantive change, certain general and permanent laws, related to transportation, as subtitles II, III and V-X of Title 49, United States Code, and to make other technical improvements to the Code. H.R. 1758 was reported by the House Judiciary Committee on July 15, 1993 (H. Rpt. 103-180) and passed the House on July 27, 1993. On August 3, 1993, it

was referred to the Senate Committee on the Judiciary, which did not act on the bill by the end of the fiscal year. H.R. 1758 is an update of H.R. 1537 from the 102nd Congress, which passed both Houses of Congress in different forms.

On August 4, 1993, Congressman Bill Emerson (R-MO) introduced H.R. 2860, which closely follows H.R. 4406, introduced in the 102nd Congress by Congressman Packard (R-CA). Both of these bills were based on a legislative proposal by Commissioner Phillips and then-Commissioner Emmett transmitted to Congress in May 1991. H.R. 2860 deals with a variety of issues in both interstate and intrastate regulation of the motor carrier industry. The House did not act on the bill prior to the end of the fiscal year.

During the fiscal year, three bills were introduced in the House and one in the Senate to sunset the ICC. Senator John C. Danforth (R-MO) introduced S. 1248, the Interstate Commerce Efficiency and Safety Improvement Act of 1993. Congressman Joel Hefley (R-CO) introduced H.R. 896, the Interstate Commerce Commission Sunset Act of 1993; Congressman Christopher Cox (R-CA) introduced H.R. 2858, the Interstate Commerce Commission Sunset Act; and Congressman John R. Kasich (R-OH) introduced H.R. 3127, the Interstate Commerce Efficiency and Safety Improvement Act of 1993. In essence, all of these bills are the same. They would transfer all Commission functions to other agencies, in most cases to the Department of Transportation. Action related to these bills was undertaken after Fiscal Year 1993 ended.

ADMINISTRATION

Highlights of the Year

- Commission approved reorganization to increase efficiency in case management.
- Commission established toll-free "Hotline" to contact Inspector General's Office with suggestions and comments regarding ICC operations.
- Office of Public Assistance responded to over 25,000 public inquiries on interstate transportation matters.

ADMINISTRATION

Organization and Management

During Fiscal Year 1993, the Commission approved the reorganization of specific functions in the Office of the Secretary and the Office of Proceedings to increase efficiency in case management. The reorganization consolidated in the Office of the Secretary the "gatekeeping" functions involved in the screening and processing of unopposed applications for motor carrier authority. This consolidation eliminated minor duplication of processing and tracking, and streamlined the application process. The reorganization has provided centralized case tracking and enhanced the quality of responses to public inquiries concerning the docket.

The Commission established a toll-free, Inspector General "Hotline" telephone number (1-800-927-0720). Members of the public and the Federal government may contact the Inspector General's Office with suggestions and comments regarding operations of the ICC and/or the Federal government. The number was established in response to Vice President Gore's six-month National Performance Review of the Federal government. At the direction of President Clinton, the "reinventing government" process includes consideration of suggestions or comments from citizens regarding governmental programs and operations.

Office of Public Assistance

The Commission's Office of Public Assistance responded to over 25,000 inquiries regarding interstate surface transportation matters. Advice and assistance were provided to numerous parties involved in both rail abandonment and construction cases and in other Commission proceedings. Additionally, state and/or local government bodies in 29 states requested and were furnished guidance on a wide variety of surface transportation issues.

The Office revised three rail publications, updated two motor carrier booklets, issued five informational bulletins, and updated the Commission's listing of minority and female-owned motor carriers. Staff also participated in several conferences and meetings sponsored by other government and private organizations involved in interstate transportation.

Human Relations

In Fiscal Year 1993, the Office of Human Relations continued to carry out its public service mandate in the areas of equal employment opportunity (EEO) and human resource management.

The Human Relations staff provided formal EEO training regarding changes in federal EEO complaint processing procedures for all managers, supervisors, and employees at headquarters, as well as in three field locations. Additionally, the office sponsored a career enrichment workshop, a health awareness seminar, and a presentation focusing on women and the glass ceiling.

Commission Budget

Fiscal Year 1993 Appropriations

Commission funding for Fiscal Year 1993 was included in the Department of Transportation and Related Agencies Appropriations Act, 1992,¹ approved October 6, 1993, which authorized the following appropriations:

- Salaries and Expenses: \$43,930,000 for necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b), and not to exceed \$1,500 for official reception and representation expenses. This amount is subject to two provisions: (1) that joint board

¹ Public Law 102-388.

members and cooperating State commissioners may use Government transportation requests when traveling in connection with their official duties as such, and (2) that fees collected by the Interstate Commerce Commission in Fiscal Year 1993, pursuant to 31 U.S.C. 9701 shall be made available to this appropriation in Fiscal Year 1993 to an amount not to exceed \$7,300,000.

- Directed Rail Service: None of the funds provided in this Act shall be available for the execution of programs the obligation for which can reasonably be expected to exceed \$475,000 for directed rail service authorized under 49 U.S.C. 11125 or any other Act.
- The Fiscal Year 1993 Appropriation was reduced to \$43,570,000 due to a \$360,000 rescission contained in the Supplemental Appropriations Act of 1993.²

Fiscal Year 1994 Appropriation

On March 31, 1993, Chairman McDonald, Vice Chairman Simmons, and Commissioner Walden appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the Commission's Fiscal Year 1994 budget request. On October 15, 1993, House and Senate confer-

ees approved the Commission's Fiscal Year 1994 funding in the total amount of \$44,690,000 to fund 615 staff-years.

Fiscal Year 1995 Budget Request

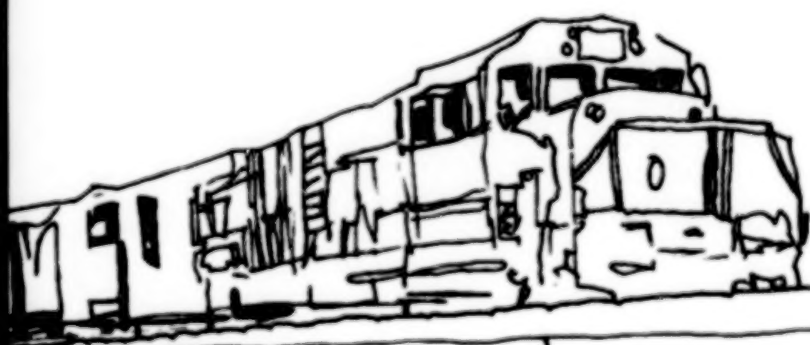
The Commission's Fiscal Year 1995 budget was developed and submitted concurrently to the Office of Management and Budget and the Congress in September 1993. The budget requested a staffing level of 611, which reflected a decrease of 19 staff-years from the Fiscal Year 1993 authorized ceiling of 630. This request reflects the results of the Commission's ongoing reviews of its Offices and their workloads for opportunities to maximize resource utilization.

Payments for Directed Rail Service Appropriation

The last instance of subsidized directed rail service occurred between October 5, 1979, and March 23, 1980, when the Kansas City Terminal Railway Company provided service over the lines of the Chicago, Rock Island, and Pacific Railway Company. The Congress last appropriated funds for this directed service in a Fiscal Year 1982 supplemental appropriation.

Funds for this purpose were neither requested nor appropriated for Fiscal Year 1994, because no new, subsidized directed rail service is anticipated.

² Public Law 103-50.



APPENDIX A

THE YEAR IN REVIEW

OCTOBER

- 6 Commission awards damages of over \$600,000 under the recyclable rate cap for movements of automobile shredder residue.
- 19 Commission decides that A-Line, LTD. may not collect undercharges on COFC service.
Commission hears oral argument concerning Wisconsin Central Transportation Company's proposed common control of Fox Valley & Western Ltd.

NOVEMBER

- 2 Commission grants Union Pacific Railroad Company authority to abandon "Wallace Branch" in Idaho subject to certain conditions.
- 3 Commission issues motor carrier rate reasonableness decision in the Georgia-Pacific Corporation proceeding.
- 6 Commission finds Kansas City Southern's control of MidSouth Rail a significant transaction and sets procedural schedule.
Commission adopts 1992 user fee schedule.
- 9 Commission proposes to amend written lease requirements for household goods carriers.
Commission simplifies regulations governing the condition of rail cars used to transport grain.
- 10 Commission issues decision in railroad car hire compensation proceeding.

DECEMBER

- 2 Commission amends certain procedures for railroads under bankruptcy reorganization.
- 4 Commission approves shipper notification letter for use in its undercharge prescreening procedures.
- 11 Commission issues policy statement concerning compliance procedures for non-rail applicants.
- 18 Office of Economics releases staff study on motor carrier service levels to small communities.

JANUARY

- 5 Commission requests public comments on proposal to revoke or modify shipper-coded tariffs.
Commission requests comments on proposal to reimpose requirements for tariff indexes.
Commission requires "range" tariff users to "show cause" why such tariffs should not be canceled.

- 13** Commission announces continuing implementation of rules prohibiting discrimination on basis of handicap.
Commission exempts from regulation rail transportation of new motor vehicles and parts.
- 14** Commission orders Burlington Northern Railroad Company to cancel its charges for use of certain types of bills of lading.
- 15** Commission institutes telephone automated response capability.
- 22** Commission requests public comments on rules to implement single-state insurance registration system.
- 25** Commission requests public comments on proposal to exempt from regulation rail movement of used motor vehicles.
- 29** Commission proposes modification of household goods carriers' performance reports.

FEBRUARY

- 10** Commission exempts railroad construction in Arkansas and Missouri.
Commission requests public comments on proposal to exempt from regulation select commodity groups transported by railroad.
- 26** Commission eliminates regulation requiring separate operations and records for private trucking firms providing occasional, for-hire transportation.
Commission accepts for consideration the proposed common control of three of the nation's major railroads, Union Pacific Railroad Company, Missouri Pacific Railroad Company and Chicago and North Western Transportation Company.

MARCH

- 2** Commission adopts individual "make-whole" adjustments in calculation of rail cost recovery percentage and URCS Phase III costing program.
- 5** Commission denies and dismisses petitions of Cascade Trailways and Peter Pan Bus Company to reopen the Greyhound-Trailways purchase proceeding.
Commission institutes study of adequacy of nation's intercitybus service.
- 11** Commission establishes a method for calculating the amount of subsidy to be paid for continued rail service under an offer of financial assistance.
- 12** Commission announces intention to increase monitoring of motor carrier tariffs and requests public comments on review of motor tariff regulations.
- 23** Commission finds jurisdictional threshold for rate regulation of rail traffic remains at 180 percent.
- 31** Commission seeks public comments on its approach in determining rate reasonableness for past trucking transportation.

APRIL

- 5** Commission requests public comments on request to exempt rail movement of scrap paper.
- 8** Commission begins investigation of jurisdictional issues involved in Los Angeles-area counties acquisition of Santa Fe rail lines.
- 9** Commission requests public comments on merger request of two motor rate bureaus.
- 13** Commission begins toll-free "hotline" for receipt of suggestions and comments in response to national performance review to "reinvent government".
- 14** Commission revises regulations for interest computation in rail investigation and complaint cases.
- 16** Commission requests public comments on electronic tariff filing system.

MAY

- 7** Commission makes 1992 rail cost of capital determination.
- 11** Commission clarifies rules on depreciation of railroad car hire rates. Commission partially exempts from regulation rail transportation of nonferrous recyclables.
- 12** Commission issues decision in Delaware and Hudson Railway and Conrail switching agreement in Philadelphia.
- 18** Commission issues decision in single state insurance registration program.
- 20** Commission issues updated booklet on consumer rights and responsibilities in interstate household moves by ICC-regulated moving companies.
- 26** Commission issues decision in railroad flat car pooling agreement applications.
- 27** Commission finds it has no jurisdiction over Norfolk & Western rail lines leased to Metra for Chicago-area commuter operations.

JUNE

- 4** Commission approves application of Kansas City Southern and others for common control of MidSouth Corp. and its rail subsidiaries.
- 7** Commission requests public comments on issues of off-bill discounting.
- 29** Commission proposes revision of rail and water carrier bills of lading.
- 30** Commission finalizes productivity adjustment rules for rail cost adjustment factor.

JULY

- 9** Commission approves merger of two motor carrier rate bureaus.
- 12** Commission begins declaratory order proceeding on Yellow Freight System's reweighing practice.
- 20** Chairman orders survey of small railroads affected by Midwest flooding and transmits results to Secretary of Transportation and Congress.
- 26** Commission releases staff report on intercity bus service.

AUGUST

- 2** Commission denies construction of railroad line.
- 3** Commission reaffirms "Georgia-Pacific" approach in determining rate reasonableness for past trucking transportation.
- 4** Commission proposes to permit use of "range" tariffs if supplemented by filings for individual shipments.
- 5** Commission proposes requiring carriers to file tariff indexes.
- 9** Commission announces 1992 rail revenue adequacy findings.
- 16** Commission seeks comments on modification of the Uniform Railroad Costing System.
- 17** Commission exempts from regulation rail transportation of used motor vehicles.

SEPTEMBER

- 1** Commission institutes rulemaking proceeding concerning shipper-coded tariffs.
- 16** Commission institutes declaratory order proceeding in single state insurance registration system.
Commission proposes to revise hazardous materials commodity descriptions in applications for motor authority.
- 20** Commission releases 1992 unit cost data for Uniform Railroad Costing System.
- 28** Commission directs Delaware-Lackawanna Railroad to provide service over lines of Pocono Northeast Railway, Inc.

APPENDIX B

COMMISSION ORGANIZATION

(as of September 30, 1993)

The Offices of the Commission are listed below. Heads of each Office report to the Chairman via the channels indicated on the organization chart.

OFFICE OF THE CHAIRMAN

Chairman	Gail C. McDonald
Chief of Staff	Amy Northcutt
Attorney Advisor	Beryl Gordon
Attorney Advisor	Craig H. Middlebrook
Confidential Assistant	Lorelei Ransome

OFFICE OF THE VICE CHAIRMAN

Vice Chairman	J. J. Simmons III
Chief of Staff	Thomas T. Vining
Attorney Advisor	Van A. Bosco
Attorney Advisor	Ricky L. Crawford
Confidential Assistant	Hazel M. Lowe
Secretarial Assistant	Rebecca W. Powell

OFFICE OF COMMISSIONER PHILLIPS

Commissioner	Karen Borlaug Phillips
Chief of Staff	Debra A. Weiner
Attorney Advisor	Samuel E. Eastman
Staff Economist	Janie A. McCutchen
Executive Assistant	Marie C. Anderson

OFFICE OF COMMISSIONER PHILBIN

Commissioner	Edward J. Philbin
Chief of Staff	Jon R. Stover
Counsel to the Commissioner	Steven Wermcrantz
Special Assistant to Commissioner	Sharron Rankine
Confidential Assistant	Zeda Homoki

OFFICE OF COMMISSIONER WALDEN

Commissioner	Gregory S. Walden
Chief of Staff	William A. Mullins
Confidential Assistant	Deborah J. Hutton

STAFF OFFICIALS

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Director	Bernard Gaillard
Assistant to the Director	Brenda B. White
Associate Director	William J. Love
Deputy Director, Section of Operations and Enforcement	Charles E. Wagner

OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS

Director	Dixie E. Horton
Associate Director	Alvin H. Brown
Associate Director	A. Dennis Watson
Acting Congressional Liaison	Lars Etzkorn
Assistant Congressional Liaison	John B. Atwood
Administrative Assistant	Verna Annetha Harris
Administrative Assistant	Carolyn I. Johnson

OFFICE OF ECONOMICS

Director	Milan P. Yager
Assistant to the Director for Policy Review	Leslie J. Selzer
Associate Director—Accounts	Aubrey H. Herndon
Chief, Section of Audit and Accounting	William F. Moss III
Chief, Section of Financial Analysis	Ward L. Ginn, Jr.
Chief, Section of Rail Costing	William T. Bono
Associate Director—Analysis	Leland L. Gardner
Chief, Section of Energy and Environment	Elaine K. Kaiser
Chief, Section of Research and Analysis	Michael A. Redisch

OFFICE OF THE GENERAL COUNSEL

General Counsel	Robert S. Burk
Deputy General Counsel	Henri F. Rush
Senior Associate General Counsel	Ellen D. Hanson
Associate General Counsel	John J. McCarthy, Jr.
Associate General Counsel	Craig M. Keats

OFFICE OF HEARINGS

Chief Administrative Law Judge	Paul S. Cross
Administrative Law Judge	Paul J. Clerman
Secretary/Administrative Officer	Alice Durham
Case Control Manager	Linda M. Charles

OFFICE OF HUMAN RELATIONS

Director	Alexander W. Dobbins
EEO Manager	Janice C. Mackey
EEO Assistant/Spanish Speaking Coordinator	Lydia A. Wright

OFFICE OF THE INSPECTOR GENERAL

Inspector General	James J. McKay
Assistant Inspector General for Audit.	Robert Merson
Counsel to the Inspector General	Marion E. Guyton
Staff Associate	Darlene Proctor

OFFICE OF THE MANAGING DIRECTOR

Managing Director	Richard H. Mooers
Counsel to the Managing Director, Privacy/FOIA Officer	Clyde J. Hart, Jr.
Information Resource Management	
Chief, Budget and Fiscal	Anthony Jacobik, Jr.
Director, Personnel Office	J. B. Robinson
Chief, Administrative Services	Virgil L. Schultz
Chief, Systems Development	Edward F. Welkener

OFFICE OF PROCEEDINGS

Director	David M. Konschnik
Assistant to the Director	Richard L. Gagnon
Deputy Director, Legal Analysis	Joseph H. Dettmar
Deputy Director, Legal Counsel	Richard B. Felder
Assistant to the Director, Section of Administration	Julia M. Farr
Management Analyst	Charles L. Renninger
Administrative Officer	Melinda K. Collins

OFFICE OF PUBLIC ASSISTANCE

Director and Special Counsel	Edward E. Guthrie
Deputy Director and Small Business Assistance Officer	Dan G. King

OFFICE OF THE SECRETARY

Secretary	Sidney L. Strickland, Jr.
Assistant Secretary	Anne K. Quinlan
Associate Secretary, Section of Adjudication	Vernon A. Williams
Associate Secretary, Records, Licensing and Service	Edward C. Fernandez
Administrative Officer	Madeline M. Echols

OFFICE OF TARIFFS

Director	Neil S. Llewellyn
Assistant to the Director	James W. Greene
Chief, Section of Tariff Maintenance and Compliance	Charles E. Langyher III
Chief, Section of Rates and Informal Cases	Lawrence C. Herzig
Administrative Officer	Margie S. Yeager

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES****EASTERN REGION**

Regional Headquarters	Richard M. Biter Regional Director 3535 Market Street Room 16400 Philadelphia, PA 19104-2115
Atlanta	101 Marietta Street, N.W. Room 1007 Atlanta, GA 30303-3107
Baltimore	1025 Fallon Federal Building Charles Center 31 Hopkins Plaza Baltimore, MD 21201-2813
Boston	99 Summer Street, 5th Floor Room 500 Boston, MA 02110-1200
Charlotte	Room CC-516 Mart Office Building 800 Briar Creek Road Charlotte, NC 28205-6903
Cleveland	Commerce Plaza 7123 Pearl Road Room 310 Middleburg Heights, OH 44130-4944
Jacksonville	1851 Executive Center Drive Suite 204 Jacksonville, FL 32207-3217
New York	Jacob K. Javits Federal Building 26 Federal Plaza Room 1807 New York, NY 10278-0073

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES.—Continued****CENTRAL REGION**

Regional Headquarters	William Redmond, Jr. Regional Director Xerox Center 55 West Monroe Suite 550 Chicago, IL 60603-5003
Fort Worth	411 West 7th Street Suite 510 Fort Worth, TX 76102-3694
Indianapolis	Federal Building & U.S. Courthouse 46 East Ohio Street Room 429 Indianapolis, IN 46204-1922
Kansas City	2111 Federal Building 911 Walnut Street Kansas City, MO 64106-2009
Minneapolis	Federal Building & U.S. Courthouse 110 South Fourth Street Room 475 Minneapolis, MN 55401-2296
Omaha	Federal Office Building Room 728 106 South 15th Street Omaha, NE 68102-1615
St. Louis	1222 Spruce Street Room 1.207 St. Louis, MO 63103-2811

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES.—Continued****WESTERN REGION**

Regional Headquarters	John H. Kirkemo Regional Director 211 Main Street Suite 500 San Francisco, CA 94105-1919
Denver	Federal Office Building 1961 Stout Street Room 440, Drawer No. 3549 Denver, CO 80294-3549
Los Angeles	360 East 2nd Street Suite 304 Los Angeles, CA 90012-4263
Salt Lake City	2414 Federal Building 125 South State Street Salt Lake City, UT 84138-1102
Seattle	1894 Federal Building 915 Second Avenue Seattle, WA 98174-1001

INTERSTATE COMMERCE COMMISSIONERS 1887-1993

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich.	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	Ill.	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem.	Dec. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	Vt.	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	Ala.	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	Vt.	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	N.Y.	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	Iowa	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	Ga.	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	Vt.	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	Ill.	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	Ill.	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	Mo.	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	Calif.	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	Iowa	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	Ill.	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	Ky.	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	Wis.	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	Calif.	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	Colo.	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	N.J.	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	Oreg.	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	Va.	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	Mass.	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	Mass.	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. ¹	N.J.	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	N.Y.	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	Wis.	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	Wash.	Rep.	May 5, 1921	Jan. 6, 1930
31. LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934

¹ Recess appointment only, not confirmed.

INTERSTATE COMMERCE COMMISSIONERS **1887-1993.—Continued**

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
39. LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M.W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, EVERETT	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	W.Va.	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	Kans.	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	Ill.	Rep.	July 31, 1967	Aug. 31, 1977
75. BURKE, Wallace R.	Conn.	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	Calif.	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	Md.	Rep.	Dec. 15, 1969	June 18, 1992
78. BREWER, W. Donald	Colo.	Rep.	July 23, 1970	June 30, 1974

INTERSTATE COMMERCE COMMISSIONERS **1887-1993.—Continued**

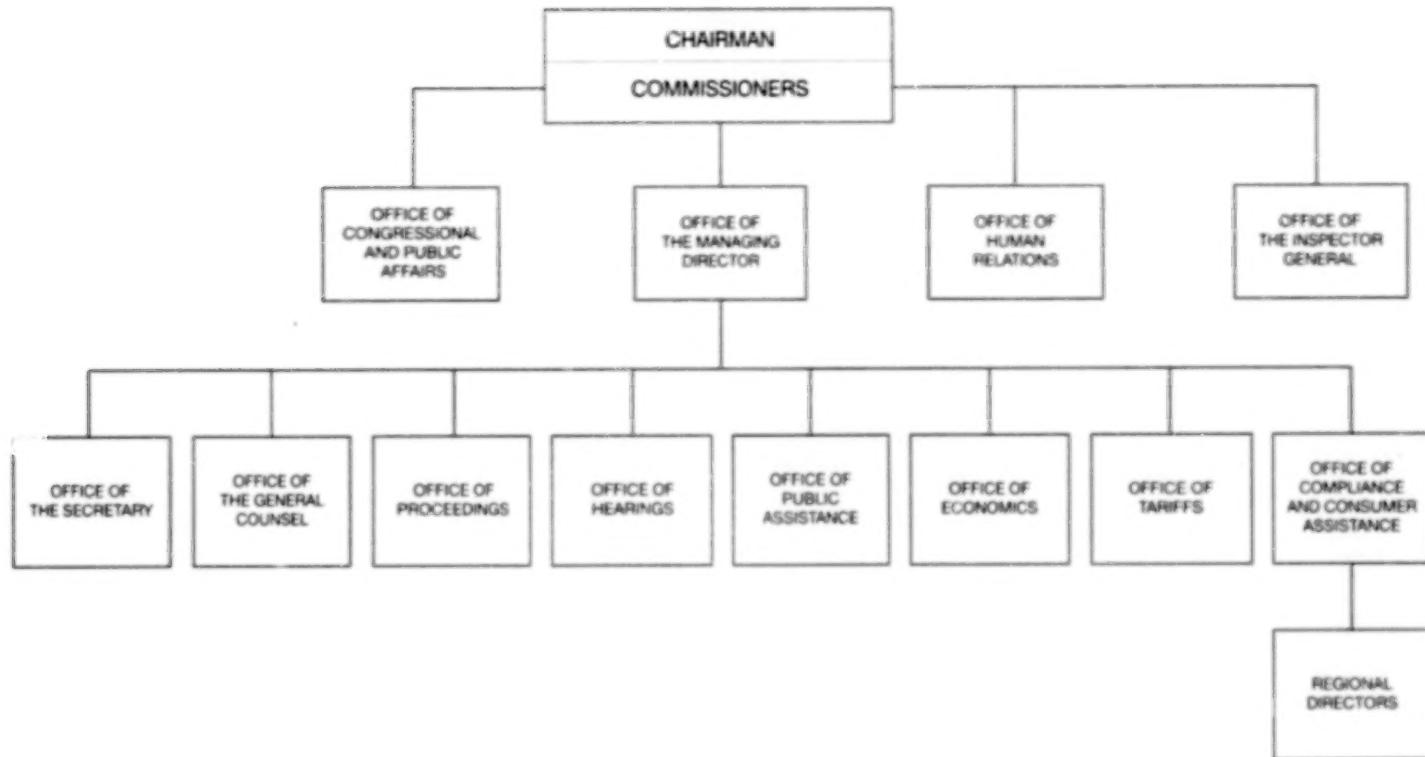
Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
79. WIGGIN, Chester M., Jr.	N.H.	Rep.	Oct. 24, 1972	July 31, 1973
80. McFARLAND, Alfred T.	Tenn.	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo ²	Calif.	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel, Jr.	Wash.	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L.	Mass.	Rep.	Mar. 14, 1974	Mar. 19, 1982
84. CORBER, Robert J.	Va.	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	Tex.	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A.	Conn.	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W.	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus	Ill.	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E.	Va.	Dem.	Apr. 21, 1980	Feb. 1, 1983
90. TAYLOR, Reese H., Jr.	Nev.	Rep.	June 25, 1981	Dec. 31, 1985
91. STERRETT, Malcolm M.B.	Md.	Rep.	Feb. 12, 1982	Aug. 11, 1988
92. ANDRE, Frederic N.	Ind.	Rep.	Mar. 19, 1982	Nov. 21, 1989
93. SIMMONS, J.J. III ³	Okla.	Dem.	Apr. 27, 1982 Sept. 10, 1984	Feb. 28, 1983
94. GRADISON, Heather J.	Ohio	Rep.	June 18, 1982	Feb. 12, 1990
95. LAMBOLEY, Paul H.	Nev.	Dem.	Sept. 11, 1984	Oct. 1, 1990
96. STRENIO, Andrew J. Jr.	Md.	Dem.	Sept. 14, 1984	Dec. 31, 1985
97. PHILLIPS, Karen B.	Va.	Rep.	Aug. 11, 1988	
98. EMMETT, Edward M.	Tex.	Rep.	Nov. 21, 1989	Nov. 5, 1992
99. PHILBIN, Edward J.	Calif.	Rep.	Feb. 12, 1990	
100. McDONALD, Gail C.	Okla.	Dem.	Oct. 5, 1990	
101. WALDEN, Gregory S. ⁴	Calif.	Rep.	Jan. 4, 1993	Nov. 26, 1993

² Recess appointment only, not confirmed.

³ Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

⁴ Recess appointment only, not confirmed.

INTERSTATE COMMERCE COMMISSION
Organizational Chart



APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. The Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. To place orders or for price information, contact:

Superintendent of Documents
U.S. Government Printing Office
Washington DC 20402
Telephone (202) 783-3238

Publications without an asterisk may be obtained free of charge (while supplies last) by writing to the ICC office listed after the title. All offices can be reached by writing the name of the office, Interstate Commerce Commission, Washington, DC 20423. The offices are:

- Office of Compliance and Consumer Assistance (OCCA)
- Office of Congressional and Public Affairs (OCPA)
- Office of Economics (OE)
- Office of the Secretary (SE)
- Office of Public Assistance (OPA)

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Office of Economics' Public Reference Room (Room 3378) from 8:30 a.m. to 5:00 p.m., Monday through Friday. Photocopies of these reports, at a cost of 60 cents per page, with a \$5.00 minimum charge per order, may be obtained by writing to the Office of the Secretary, Room 2227, ICC, Washington, DC 20423. Telephone (202) 927-5693.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to one year following the date of service from Dynamic Concepts, Inc. (DCI),

Room 2229, ICC, Washington, DC 20423, or by calling (202) 289-9357 or (202) 289-4359. Printed reports in the "ICC 2nd Series" are available through DCI.

CONSUMER PUBLICATIONS

OCP-100 When You Move: Your Rights and Responsibilities—OCCA.

This booklet explains consumer rights when moving household goods across the state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress—OCPA.

Years available:

- 98th Report (1984)
- 99th Report (1985)
- 102nd Report (1988)
- 103rd Report (1989)
- 104th Report (1990)
- 105th Report (1991)
- 106th Report (1992)
- 107th Report (1993)*

*Code of Federal Regulations, Title 49, Revised to October 1993**

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures.

Parts 1200-End: Uniform system of accounts, preservation of records, reports, valuation, handling of national security information and classified material, passenger and freight tariffs and schedules, and credit regulations.

Interstate Commerce Act

Available from West Publishing Company, P.O. Box 64833, St. Paul, MN 55164, in Title 49 U.S. Code, Sec. 10101 et seq.

ICC Register

A daily summary of Commission decisions, notices, and motor carriers applications. Subscription information

is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Abandonments and Alternative to Abandonments: Overview—OPA (May 1993)

Before You Start a Small Railroad: A Brief Overview of things to Consider—OPA (May 1993)

Bus Industry: Staff Study of the U.S. Regular Route Bus Industry—OE (July 1993)

Environment: Guide to the Interstate Commerce Commission's Environmental Rules—OE (December 1991)

Federal and State Regulations Concerning Interstate Motor Operations: Overview—OPA (April 1993)

Illegal Lumping—OCCA

Lease-Purchase Plans—OPA

Listing of Minority and Female Motor Carriers—OPA (April 1993)

The Motor Carrier Industry Long After Deregulation—OE (March 1992)

Motor Carrier Undercharge Claims—OPA (March 1993)

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OPA

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OPA (February 1993)

Rails To Trails: An Overview—Thousands of miles of rail corridors have been converted to recreational trails across the country. To further facilitate trail development and preservation of rail rights-of-way, this booklet provides an overview of the National Trails System Act and ICC regulations. It is intended to provide guidance to government agencies and private citizens interested in developing and maintaining trails. OPA (November 1993)

Small Carrier Transfer and Name Change Procedures—OPA (December 1988)

So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—OPA (September 1992)

"Transportation: Trucking Services" as appearing in U.S.C. Industrial Outlook—OE (1993)

Truck Service to Small Communities: An Update—OE (December 1992)

Inspector General Reports

Photocopies of Audit Reports and semiannual reports are available at a cost of 60 cents per page, with a \$5.00 minimum charge per order, from the Office of the Secretary, Room 2227, ICC, Washington, DC 20423. Telephone: (202) 927-5693.

Speeches and Statements—OCPA

ICC Commissioner's speeches or statements before Congressional committees may be obtained on an individual basis, when available, from the Office of Congressional and Public Affairs, Room 3130, ICC, Washington, DC 20423. Telephone (202) 927-5350.

SPECIALIZED PUBLICATIONS

Motor

Transport Statistics in the U.S. Motor Carriers—OE

(First Release, Part 2, 1992)

(Second Release, Part 2, 1992)

The Commission's Office of Economics (OE) publishes quarterly reports on selected earnings data, as follows:

- Large Class I Motor Carriers of Property
- Large Class I Motor Carriers of Passengers
- Large Class I Household Goods Carriers

Rail

Class I Line-Haul Railroads, Selected Earnings Data—OE (Quarterly)

Rail Rates Experience Multi-Year Decline—OE (May 1992)

A Survey of Shipper Satisfaction with Service and Rates of Shortline and Regional Railroads—Joint Staff Study—OE (August 1989)

Report of Railroad Employment Class I Line-Haul Railroads—OE

Coal Transportation and the Staggers Rail Act of 1980—OE (October 1990)

Transport Statistics in the U.S., Railroad Companies—OE (1992)

Wage Statistics of Class I Railroads in the U.S.—OE

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Programs User's Manual. Description of the independent interactive computer program for estimating cost of specific, individual rail movements—OE (May 1990)

URCS—Uniform Railroad Costing System, Phase II, Movement costing Pro-

gram Technical Manual. Description of Fortran costing programs compatible to Digital equipment Corporation and IBM equipment—OE (December 1989)

CADLAS—Computer Assisted Depreciation and Life Analysis System—A personal computer-based system to estimate average service lives and salvage values of locomotives, rolling stock, roadway property and track accounts. It also calculates annual depreciation expenses and theoretical depreciation reserves. A copy can be obtained for \$195 by contacting Chief, Section of Financial Analysis, Room 3146, ICC, Washington, DC 20423. Telephone (202) 927-5740.

URCS—1992 Uniform Railroad Costing System Unit Costs—A personal computer-based system to estimate the average variable and total cost of providing railroad service. A copy of the unit costs and movement costing program can be obtained for \$20 by contacting Chief, Section of Rail Costing, Room 3345, ICC, Washington, DC 20423. Telephone (202) 927-5740.

APPENDIX D

Appropriations and Employment

The following statement shows average full-time employment and total appropriations for the fiscal years 1959 to 1993 for activities included under the current appropriation title "Salaries and Expenses."

Fiscal Year	Appropriation	Average Employment	Fiscal Year	Appropriation	Average Employment
1959...	18,747,800	2,268	TQ....	12,290,000	2,113
1960...	19,650,000	2,344	1977...	60,786,000	2,084
1961...	21,451,500	2,386	1978...	65,575,000	2,040
1962...	22,075,000	2,400	1979...	70,400,000	2,040
1963...	23,502,800	2,413	1980...	79,063,000	1,946
1964...	24,670,000	2,408	1981...	82,400,000	1,852
1965...	26,715,000	2,339	1982...	70,150,000	1,540
1966...	27,540,000	2,376	1983...	65,600,000	1,319
1967...	27,169,000	1,929	1984...	60,000,000	1,158
1968...	23,846,000	1,899	1985...	51,100,000	915
1969...	24,664,000	1,808	1986...	48,408,000	806
1970...	27,742,660	1,802	1987...	46,802,000	732
1971...	28,442,000	1,731	1988...	44,294,000	712
1972...	30,640,000	1,676	1989...	43,115,000	699
1973...	33,720,000	1,765	1990...	44,205,000	665
1974...	40,681,000	1,874	1991...	43,777,000	630
1975...	44,970,000	1,986	1992...	40,923,000*	613
1976...	52,455,000	2,034	1993...	43,570,000*	617

Source: Appropriation data; Annual Appropriation Acts. Average Employment; Commission's report to OPM, SF 113-G.

*Beginning in FY 1992, the Commission's Budget request has been statutorily offset by the collection of user fees. For FY 1993, that amount was \$6,962,040. The Commission's total appropriation for FY 1993 was reduced by a \$360,000 rescission, in accordance with P.L. 103-50.

Status of Appropriations

Status of fiscal year 1993 appropriation as of September 30, 1993.

Salaries and expenses:	
Total appropriations	\$43,930,000
Reimbursements	7,352,346
Balanced Budget and Emergency Deficit Control Act of 1985 Reduction	—0—
Total obligations	50,877,732
Unobligated balance available for adjustments	44,614
Directed Rail Service:	
Unobligated balance available from prior appropriation	—0—
Total obligations—Payments to carriers	—0—
Recoveries of prior years obligations	—0—
Unobligated balance available (end of year)	—0—

Receipts

Status of receipt accounts as of September 30, 1993.

Registration and filing fees	\$6,895,302
Fines, penalties, and forfeitures . .	376,069
Service charges for allotments of pay for savings account	—0—
Charges for administrative services	66,738
Miscellaneous recoveries and refunds	6,828
Withholding for military benefits .	—0—
Interest and penalties for late payments	—0—
Total Receipts	\$7,344,937

Source: Commission's Accounting System.

APPENDIX E

COMMISSION WORKLOAD

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1993.

MOTOR MATTERS					
Case Type	Openings	Opposed	Closings		Total
			Unopposed	Dismissed Rejected/ Withdrawn	
Rulemakings	16	9	2	0	11
Motor Property Licensing:					
Initial Common	4,545	1	4,438	29	4,468
Initial Contract	7,984	3	7,804	41	7,848
Extension Common	379	0	401	4	405
Extension Contract	365	0	390	5	395
Motor Passenger Licensing:					
Initial Common	695	8	676	3	687
Initial Contract	225	1	219	1	221
Extension Common	54	5	49	0	54
Extension Contract	6	0	6	0	6
Passenger Carrier Exit	0	0	0	0	0
Water Carrier Licensing	9	0	6	1	7
Freight Forwarder Licensing	123	0	104	15	119
Property Broker Licensing:					
Initial	3,207	4	3,149	79	3,232
Extension	18	0	16	2	18
Motor Carrier Complaints:					
Rate: Ex Parte MC-177	206	56	0	38	94
Interstate/Intrastate	3	4	0	0	4
Other	6	5	0	1	6
Restriction Removal	11	0	12	0	12
Investigation & Suspension	1	1	0	6	7
Motor Rate	31	5	18	5	28
Passenger Rate Review	1	0	1	0	1
Motor Carrier Finance	1 233	2	204	21	227
Small Carrier Transfer	628	0	610	54	664
Motor Finance Temporary					
Authority	68	2	63	3	68
Rate Bureau	0	0	2	0	2
Other Motor Matters	4	0	4	0	4
Total	18,818	106	18,174	308	18,588

¹ Includes 232 exemptions according to docket Ex Parte No. 55 (Sub-No. 57).

² The Commission approved amendments in 2 proceedings.

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases During Fiscal Year 1993.—Continued

RAIL MATTERS				
Case Type	Openings ¹	Pending	Decisions ²	
			Procedural	Substantive
Rulemakings and Other Ex Parte Proceedings	16	20	10	48
Abandonments:				
Non-NERSA	15	8	4	73
Conrail under NERSA ³	3	0	0	4
Exemptions ⁴	129	29	10	298
Rates:				
Complaints, Declaratory Orders, Investigations and Rate Bureau Activity	7	26	20	45
Investigations and Suspensions	0	0	0	0
Exemptions	1	0	0	1
Finance Docket:				
Exemptions ⁵	178	62	36	213
Other ⁶	34	48	67	79
Total	383	193	147	761

¹ Excludes filings rejected by letter, reopenings and court remands.

² In addition to these decisions, 201 miscellaneous issuances were served. Where a single decision has embraced proceedings, the decision is counted only once.

³ North East Rail Service Act, applies only to Conrail.

⁴ Includes petitions and notices of exemption.

⁵ Includes petitions and notices of exemption.

⁶ Includes mergers and consolidations, feeder line acquisitions, arbitration review proceedings, petitions seeking declaratory order, and other financial transactions..

TABLE 2.—Tariff Schedules and Rail Contracts, Fiscal Year 1993.

	Received	Criticized	Rejected
Freight:			
Common Carrier Tariffs:			
Rail	105,636	160	289
Motor	1,083,034	9,077	5,450
Water	76,954	33	69
Freight Forwarder	85	5	0
International Ocean-Land Intermodal	27,559	1	0
Total	1,293,268	9,276	5,808
Contract Carrier Filings:			
Rail Contracts	2,942	0	30
Rail Summaries	40,654	1,289	89
Total	43,596	1,289	119
Passenger Tariffs:			
Rail	0	0	0
Motor	4,552	449	175
Water	0	0	0
Total	4,552	449	175
Grand total	1,341,416	11,014	6,102

Source of Data: Bureau of Tariffs statistical reports.



TABLE 3.—Action Taken on Proposals (Protested and Non-Protested) Considered by the Suspension/Special Permission Board, Fiscal Year 1993.

	Rail	Motor	Water	Pipeline	Total
Suspension Cases:					
Suspended	0	2	0	0	2
Not suspended but investigated	0	0	0	0	0
Not suspended or investigated	6	14	0	0	20
Protests withdrawn	0	2	0	0	2
Tariff proposals cancelled	1	1	0	0	2
Petitions for reconsideration:					
Granted	0	0	0	0	0
Denied	0	1	0	0	1
Total	7	20	0	0	27

TABLE 3.—Action Taken on Proposals (Protested and Non-Protested) Considered by the Suspension/Special Permission Board, Fiscal Year 1993.—Con.

	Rail	Motor	Water	Pipeline	Total
Special Tariff Authority Applications:					
Granted	1	18	0	1	20
Denied	0	3	0	0	3
Revoked	0	0	0	0	0
Withdrawn	0	2	0	0	2
Special Contract Authority Applications:					
Granted	15	0	0	0	15
Denied	0	0	0	0	0
Total	16	23	0	1	40
Grand total	23	43	0	1	67

Source of Data: Office of Tariffs statistical reports.



TABLE 4.—Informal Rate Cases Branch (Office of Tariffs—Fiscal Year 1993).

Tariff interpretations:		
On hand beginning of year		28
Received during year		6,279
Disposed of during year		6,266
Pending at end of year		41
Informal complaints and statements of claimed damages:		
On hand beginning of year		2
Received during year		0
Disposed of during year		2
Pending at end of year		0
Special docket cases:		
On hand beginning of year		65
Received during year		1,367
Disposed of during year		1,397
Pending at end of year		35

Source of Data: Office of Tariffs statistical reports.



TABLE 5.—ICC Unit of the National Defense Executive Reserve (NDER).

NDER Group	Fiscal Year 1991 On Roll	Fiscal Year 1992 On Roll	Fiscal Year 1993 On Roll
Rail	240	218	132
Motor	51	42	24
Water	10	8	4
Total	301	268	160

Source: Office of Compliance and Consumer Assistance.

TABLE 6.—Car Supply—Car Ownership, Installations, Retirements and Transfers, and Orders, Class I Railroads.

	Fiscal Year			
	1978	1983	1988	1993
Car Ownership:				
Plain Box	223,705	130,217	64,018	27,111
Equipped Box	166,965	145,582	89,066	77,609
Total Box	389,785	275,799	153,084	104,720
Refrigerator	69,367	54,441	39,328	28,073
Gondola	158,886	130,150	89,905	88,546
Hopper	326,862	286,121	195,790	141,226
Covered Hopper	161,758	164,655	148,562	141,826
Flat	97,119	84,440	85,823	74,356
Other	29,446	22,315	13,069	6,897
Total Cars	1,232,489	1,018,171	725,561	585,644
Cars Installed:				
Box	7,203	612	0	10
Refrigerator	15	0	0	0
Gondola	2,492	281	175	1,515
Hopper	11,421	1,519	150	0
Covered Hopper	4,987	262	795	1,348
Flat	1,967	338	502	75
Other	40	0	0	0
Total Cars	28,125	3,012	1,622	2,948
Cars Retired or Transferred to Owners Other Than Class I Railroads:				
Box	36,307	12,202	14,571	6,227
Refrigerator	2,841	2,002	2,611	1,280
Gondola	9,302	6,960	7,322	¹ -1,320
Hopper	18,159	13,027	10,679	20,062
Covered Hopper	2,304	4,870	¹ -1,921	¹ -918
Flat	1,306	3,641	¹ -1,118	¹ -434
Other	2,539	1,145	2,546	¹ -1,408
Total Cars	72,758	43,847	34,690	23,489

TABLE 6.—Car Supply—Car Ownership, Installations, Retirements and Transfers, and Orders, Class I Railroads.—Continued

	Fiscal Year			
	1978	1983	1988	1993
Cars Ordered:				
Box	8,629	150	311	776
Refrigerator	192	0	0	0
Gondola	2,054	281	2,120	1,061
Hopper	16,224	995	250	0
Covered Hopper	7,183	321	2,830	2,450
Flat	1,110	360	673	243
Other	² -160	0	30	0
Total Cars	35,232	2,107	6,214	4,530

¹ Negative retirement indicates increase in ownership in excess of new installations resulting from reclassification or transfer of equipment, purchase or lease of used equipment, etc.

² Order figures include net after cancellations.

Source: Association of American Railroads.



TABLE 7.—Railroad Revenue Adequacy Status.

Railroad	Return on Investment	Finding
1. Atchison, Topeka and S.....	1.9%	Inadequate
2. Burlington Northern R. Co	9.4%	Inadequate
3. Chicago & North Western Transp. Co	10.3%	Inadequate
4. Consolidated Rail Corp	6.5%	Inadequate
5. CSX Transportation, Inc.1%	Inadequate
6. Florida East Coast R. Co	(*)	(*)
7. Grand Trunk Western R. Co	Negative	Inadequate
8. Illinois Central R. Co	14.2%	Adequate
9. Kansas City Southern R. Co.	9.0%	Inadequate
10. Norfolk Southern Corp	12.1%	Adequate
(Combined Railroad Subsidiaries)		
11. Soo Line R. Co	Negative	Inadequate
12. Southern Pacific R. Co	3.5%	Inadequate
(Combined Railroad Subsidiaries)		
13. Union Pacific R. Co	11.1%	Inadequate

* = no ROI due to reclassification from Class I to Class II status in Fiscal Year 1993.

TABLE 8.—Abandonments, Construction, and New Acquisitions and Operations.

	Fiscal Year 1991		Fiscal Year 1992		Fiscal Year 1993	
	Num- ber	Miles	Num- ber	Miles	Num- ber	Miles
1. Abandonments:¹						
Applications filed	9	181	18	700	18	720
Granted	12	396	15	701	18	362
Denied	0	² 2	2	1	1	32
Dismissed	0	0	0	0	3	42
Dismissed because of sale . . .	1	10	1	16	1	20
Petitions for exemptions filed .	44	944	43	753	41	874
Granted	42	826	37	657	45	884
Denied	0	0	1	9	1	1
Dismissed	1	14	1	11	6	49
Dismissed because of sale . . .	1	5	1	18	2	46
Notices of exemption filed . . .	69	634	56	398	88	951
Granted	67	671	52	367	75	650
Dismissed	3	13	1	6	7	141
Dismissed because of sale . . .	1	6	³ 2	19	5	47
2. Construction:						
Applications filed	1	40	0	0	0	0
Granted	0	0	0	0	0	0
Denied	0	0	0	0	1	3
Dismissed	0	0	0	0	0	0
Petitions for exemptions filed .	1	5	7	47	7	101
Granted	4	3	6	50	4	82
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	2	33
Notices of exemptions filed ⁴ .	N/A	N/A	9	72	5	60
Granted	N/A	N/A	9	72	3	55
Dismissed	N/A	N/A	0	0	0	0
3. Acquisitions and Operations						
Under 49 U.S.C. 10901:						
Applications filed	0	0	0	0	0	0
Granted	0	0	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Notices of exemption filed . . .	50	3,794	53	4,581	53	5,349
Granted	48	3,556	51	4,953	49	4,615
Dismissed	2	30	2	19	3	92

¹ Total miles approved for abandonment or discontinuance of service from Transportation Act of 1920 to end of Fiscal Year 1992: 110,484

Total miles approved for abandonment or discontinuance of service from Transportation Act of 1920 to Staggers Rail Act of 1980: 78,896

Total miles approved for abandonment or discontinuance of service from Staggers Rail Act of 1980 to end of current fiscal year: 31,588.

² Miles resulting from partial denial, case counted as a grant above.

³ These cases are also counted as grants above. Only a portion of the lines considered were sold.

⁴ Includes only joint relocation projects under 49 U.S.C. 11343.

N/A = Not applicable.

TABLE 9.—Inter-carrier Financial Transactions.¹

	Fiscal Year 1991	Fiscal Year 1992	Fiscal Year 1993
1. Consolidations, Acquisitions			
Under 49 U.S.C. 11343:			
Applications filed	4	5	2
Granted	2	5	3
Denied	0	0	0
Dismissed	0	0	0
Petitions for exemption filed	22	16	22
Granted	26	15	20
Denied	0	0	0
Dismissed	0	1	1
Notices of Exemption filed	27	24	31
Granted	27	23	29
Dismissed	1	1	0
2. Trackage Rights:			
Applications filed	0	0	1
Granted	7	0	0
Denied	0	0	0
Dismissed	1	0	0
Petitions for exemption filed	0	1	0
Granted	0	1	0
Denied	0	0	0
Dismissed	0	0	0
Notices of exemption filed	46	54	46
Granted	45	52	46
Dismissed	4	0	0
3. Leases:			
Applications filed	3	0	1
Granted	2	2	0
Denied	0	0	0
Dismissed	0	0	0
Petitions for exemption filed	6	10	6
Granted	3	8	6
Denied	0	0	0
Dismissed	0	1	0
Notices of Exemption filed	0	0	0
Granted	0	0	0
Dismissed	0	0	0

¹ This table does not report mileages because that information normally is not required from the proponents of these transactions.

TABLE 10.—Extension of Time Limits Under Section 10:27(k)—Rail Proceedings, Fiscal Year 1993.

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. 40664, Ametek, Inc. v. Panther Valley Railroad Corporation, et al.	Complaint	December 11, 1992	35-day extension to consider complex legal issues



TABLE 11.—Status of State Regulation of Intrastate Rail Rates.

CERTIFIED STATES

Ex Parte No. 388 Sub-No.	State	Date certification expires
1	Alabama	June 21, 1995
2	Arkansas	December 14, 1994
3	Colorado	July 24, 1996
5	Georgia	May 23, 1995
7	Illinois	September 20, 1994
9	Iowa	January 12, 1996
10	Kansas	September 26, 1995
11	Kentucky	April 5, 1996
13	Maryland	February 7, 1996
14	Michigan	February 10, 1996
15	Minnesota	April 6, 1996
16	Mississippi	February 22, 1995
18	Montana	October 25, 1995
22	New Mexico	March 4, 1998
23	New York	December 22, 1995
24	North Dakota	February 2, 1996
26	Oklahoma	August 30, 1995
27	Oregon	May 7, 1997
29	South Carolina	September 26, 1995
33	Virginia	October 19, 1994
35	West Virginia	December 13, 1995
36	Wisconsin	September 23, 1995

TABLE 11.—Status of State Regulation of Intrastate Rail Rates.—Continued
STATES REGULATED DIRECTLY BY THE INTERSTATE COMMERCE COMMISSION

Ex Parte No. 388 Sub-No.	State	Effective Date
N/A	California	May 11, 1982
N/A	Connecticut	May 11, 1982
N/A	Delaware	May 11, 1982
4	Florida	October 1, 1985
6	Idaho	October 23, 1984
8	Indiana	June 22, 1987
12	Louisiana	May 2, 1986
17	Missouri	September 14, 1992
19	Nebraska	January 6, 1986
N/A	Nevada	May 11, 1982
20	New Hampshire	February 26, 1990
21	New Jersey	October 4, 1983
N/A	North Carolina	May 11, 1982
25	Ohio	October 29, 1984
28	Pennsylvania	June 14, 1983
30	Tennessee	March 17, 1990
31	Texas	May 20, 1984
32	Utah	March 7, 1986
34	Washington	June 14, 1991
37	Wyoming	February 22, 1983
38	Alaska	July 3, 1985

N/A = Not applicable.

UNREGULATED STATES

State	Effective Date
Arizona	May 11, 1982
Hawaii	May 11, 1982
Maine	May 11, 1982
Massachusetts	May 11, 1982
Rhode Island	May 11, 1982
South Dakota	May 11, 1982
Vermont	May 11, 1982
District of Columbia	May 11, 1982

TABLE 12.—Rail Banking and Interim Trail Use.

	Requests		Grants		Denials	
	Number	Miles	Number	Miles	Number	Miles
1986 ¹	5	88	1	27	4	61
1987	18	499	6	264	12	235
1988	20	657	11	425	9	233
1989	22	686	15	457	7	230
1990	19	322	16	229	7	93
1991	14	439	12	387	2	52
1992	19	616	14	488	5	128
1993	44	1,070	34	904	10	132

¹ Commission records are incomplete for FY 1986.

APPENDIX F

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission.

	Number
Carriers subject to Uniform System of Accounts and/or required to file annual & periodic reports as of October 1, 1993:	
Railroads, class I	13
Motor Carriers, class I passengers	31
Motor Carriers, class I property	822
Motor Carriers, class II property	1,042
Total	1,908
Carriers and organizations not required to file reports as of October 1, 1993:	
Railroads, class I	1
Railroads, class II line-haul	28
Railroads, class III line-haul	330
Railroads, other	217
Carlines (companies that furnish cars used on rail lines)	166
Holding companies—rail	4
Holding companies—motor	76
Motor carriers of passengers, other than class I	4,801
Class I and II motor carriers of property relieved from reporting	305
Class III motor carriers of property	51,341
Water carriers	358
Freight forwarders	708
Rate bureaus and organizations	71
Coal slurry pipeline company	1
Protective services companies	6
Total	58,413
Grand total	60,321

NOTE: Railroad companies, motor carriers of passengers, and motor carriers of property are classified based on gross annual operating revenues at specified levels for three consecutive years. The revenues are adjusted by a deflator factor to eliminate the effects of inflation. The inflation factor for railroad companies is based on the annual average Railroad Freight Price Index. The inflation factor for motor carriers of property is based on the annual average Producers Price Index for all commodities. The inflation factor for motor carriers of passengers is based on the Producer Price Index of finished goods. The following table displays for each mode the unadjusted revenue level and the 1992 deflator factor, used to classify carriers for accounting and reporting purposes:

CARRIER	DEFLATOR	CLASSIFICATION THRESHOLD
Railroads	.9945	Class I—\$250 million or more
		Class II—Between \$20 million and \$250 million
		Class III—\$20 million or less
Motor carriers of property	.7662	Class I—\$5 million or more
		Class II—Between \$1 million and \$5 million
		Class III—Less than \$1 million
Motor carriers of passengers	.9121	Class I—\$5 million or more
		Class II—Less than \$5 million

TABLE 2.—Class I Line-Haul Railroads Shareholders' Equity, Long-Term Debt and Dividends (Dollars in Thousands).

Item	1990	1991	1992
1. Shareholders' equity:			
a. Capital stock.	\$2,734,154	\$2,712,876	\$2,620,700
b. Capital surplus	5,515,191	5,682,155	5,608,923
c. Retained income.	15,413,231	14,207,904	14,885,233
d. Total equity.	23,662,576	22,602,935	23,114,856
2. Long-term debt.	9,479,213	9,201,309	8,210,589
3. Total equity and debt	33,141,789	31,804,244	31,325,445
4. Ratio of debt to total equity and debt (%)	28.60	28.93	26.21
5. Amount of dividends.	\$2,076,531	\$915,615	\$830,546

TABLE 3.—Class I Line-Haul Railroads, Condensed Income Statement, Financial Ratios and Employee Data (Dollars in Thousands).

Item	1990	1991	1992
1. Number of carriers represented .	14	14	13
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight	\$27,470,520	\$26,949,280	\$27,507,607
b. Passenger	93,861	93,985	90,169
c. Total operating revenues . .	28,369,803	27,845,206	28,348,895
3. Total operating expenses	24,651,542	28,061,187	25,324,506
4. Net railway operating income . . .	2,648,258	- 37,455	1,954,835
5. Ordinary income	1,961,127	- 90,849	2,055,055
6. Extraordinary items—net ¹	16,284	- 190,485	- 254,691
7. Net income	1,977,411	- 281,334	1,800,364
NET INVESTMENT AND EQUITY			
8. Net investment in transportation property and equipment plus working capital ²	37,203,643	38,091,758	38,418,467
9. Shareholders' equity	23,662,576	22,602,935	23,114,856
FINANCIAL RATIOS (PERCENT)			
10. Operating ratio (L3/L2c)	86.89	100.78	89.33
11. Return on net inv. (L4/L8)	7.12	—	5.09
12. Return on equity:			
a. Ordinary income basis (L5/L9)	8.29	—	8.89
b. Net income basis (L7/L9) . .	8.36	—	7.79
EMPLOYEE DATA			
13. Average number	216,424	206,386	197,421
14. Compensation:			
a. Total	\$8,654,186	\$8,695,146	\$8,752,861
b. Per hour paid for	15.827	16.819	17.769

¹ Includes discontinued operations, cumulative effect of accounting changes, and income taxes on extraordinary items.

² Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the Commission in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986).

NOTE: Net railway operating income, ordinary income and net income for the years 1991 and 1992 were substantially reduced due to large accounting adjustments by some railroads to record major restructuring efforts to eliminate excess capacity and increase labor productivity.

TABLE 4.—Class I Line-Haul Railroads Current Assets and Current Liabilities as of December 31, 1991 and 1992 (Dollars in Thousands).

Item	1991 amount	Percent ¹ of change	1992 amount	Percent ² of change
1. Cash and temporary cash investments	\$641,920	-31.0	\$623,647	-2.8
2. Materials and supplies	830,674	-8.0	813,208	-2.1
3. Total current assets	5,506,576	-3.4	5,155,636	-6.4
4. Total current liabilities	9,495,548	3.2	9,527,294	0.3
5. Net working capital:				
a. Including materials & supplies	(3,988,972)	—	(4,371,658)	—
b. Excluding materials & supplies	(4,819,646)	—	(5,184,866)	—
RATIOS				
6. Current assets to current liabilities:				
a. Including materials & supplies	0.58		0.54	
b. Excluding materials & supplies	0.49		0.46	
7. Cash and temporary cash investments to current liabilities	0.07		0.07	

¹ Represents percent change from prior year 1990.² Represents percent change from prior year 1991.

Table 5.—Class I Motor Carriers of Property Condensed Income Statement, Financial Ratios and Employee Data (Dollars in Thousands).

Item	1990	1991	1992
1. Number of carriers represented ¹ . . .	728	677	688
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight-intercity-common carrier	\$36,974,285	\$38,167,558	\$41,061,701
b. Freight-intercity-contract carrier	5,211,767	5,670,914	5,705,487
c. Freight-local cartage	791,732	569,198	648,537
d. Intercity transportation for other motor carriers	185,612	155,305	202,028
e. Other operating revenue	529,328	409,707	455,854
f. Private carriage & CIH revenues ²	N/A	94,861	145,061
g. Household goods revenues	3,026,208	2,729,857	2,853,741
h. Total operating revenues	46,709,932	47,797,400	51,072,409
3. Operating expenses	44,827,137	45,974,588	48,258,880
4. Net carrier operating income	1,882,795	1,822,812	2,813,529
5. Other income and miscellaneous deductions from income—net	(408,530)	(402,186)	(78,041)
6. Income taxes on ordinary income ³	486,762	536,093	562,825
7. Ordinary income	987,503	884,533	2,172,663
8. Extraordinary items—net ⁴	9,303	4,972	(41,015)
9. Net income	996,806	889,505	2,131,648
NET INVESTMENT AND EQUITY			
10. Net investment in carrier operating property and equipment plus working capital	12,392,086	13,507,919	13,137,186
11. Shareholders' and proprietors' equity	9,850,799	10,219,066	15,355,822
FINANCIAL RATIOS (PERCENT)			
12. Operating ratio (L3/L2h)	95.97%	96.19%	94.49%
13. Return on net investment (L4/L11)	15.19%	13.49%	21.42%
14. Return on equity (L9/L12)	10.12%	8.70%	13.88%
EMPLOYEE DATA			
15. Average number (whole number)	607,098	610,323	625,498
16. Compensation	\$17,735,343	\$18,232,583	\$18,310,605

¹ Carriers for which data was complete and available at publication. Data has not been audited by the Commission.

² Comparative data not available due to changes in report form.

³ Does not include income taxes applicable to sole proprietorships, partnerships and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.

⁴ Includes income taxes on extraordinary items, discontinued operations and accounting changes.

N/A = Not applicable.

TABLE 6.—Class I Intercity Motor Carriers of Passengers, Condensed Income Statement, and Financial Ratios (Dollars in Thousands).

Item	1990	1991	1992
1. Number of carriers represented ¹	21	21	21
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Passenger intercity schedules	\$738,487	\$791,524	\$755,419
b. Local and suburban schedules	4,143	3,875	3,834
c. Charter or special service . .	90,200	76,206	74,327
d. Other operating revenues. .	110,438	108,455	104,095
e. Total operating revenues . .	943,268	980,060	937,675
3. Operating expenses.	1,026,213	967,018	874,303
4. Net carrier operating income . .	(82,945)	13,042	63,372
5. Income tax on ordinary income ² .	1,317	2,693	11,102
6. Other income/deductions.	(61,729)	(41,027)	(33,533)
7. Extraordinary items—net ^{3,4}	(55,053)	176,386	2,743
8. Net income	(180,342)	161,686	21,480
EQUITY			
9. Shareholders' equity	7,411	160,558	181,159
FINANCIAL RATIOS (PERCENT)			
10. Operating ratio (Line 3/Line 2e) . .	108.79	98.67	93.24
11. Return on equity (Line 8/Line 9) .	—	100.01	11.86

¹ Carriers for which financial and statistical data were available. Data was not audited by Commission.

² Does not include taxes applicable to sole proprietorships, partnerships and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.

³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

⁴ The large amount shown for extraordinary expense in 1990 is attributable to reorganization costs incurred by Greyhound in connection with its filing for bankruptcy on June 4, 1990, pursuant to Chapter XI of the Federal Bankruptcy Code. The large amount shown for extraordinary income in 1991 is attributable to accounting adjustments by Greyhound to record the extinguishment of certain pre-bankruptcy debt, in accordance with the carrier's emergence from bankruptcy, effective October 31, 1991. Net income and shareholders' equity increased substantially in 1991 compared to 1990 as a result primarily of this write-off of debt and an improvement in Greyhound's operating results.

END

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